



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 513

[Docket No. NHTSA-2023-0014]

RIN 2127-AL85

Implementing the Whistleblower Provisions of the Vehicle Safety Act

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: Whistleblowers are an important source of information on motor vehicle safety, as Congress recognized in enacting the Motor Vehicle Safety Whistleblower Act (Whistleblower Act). NHTSA is proposing rules, including forms, to implement the Whistleblower Act and seeking comment from interested stakeholders. The Whistleblower Act authorizes the Secretary of Transportation to pay an award, subject to certain limitations, to eligible whistleblowers who voluntarily provide original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement, which is likely to cause unreasonable risk of death or serious physical injury, if the information provided leads to the successful resolution of a covered action. The Whistleblower Act also contains protections relating to the whistleblower's identity. This proposed rule will help to facilitate the Agency's identification of information provided by whistleblowers to ensure that whistleblowers receive the protections afforded under the statute. It also describes those limited situations where information that could reasonably be expected to reveal the identity of a whistleblower may be disclosed.

DATES: All comments should be submitted early enough to ensure that the Department of Transportation Docket Management receives them not later than **[INSERT DATE 60 DAYS**

AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]. In compliance with the Paperwork Reduction Act, NHTSA is also seeking comment on a proposed information collection. See the Paperwork Reduction Act section under Regulatory Analyses and Notices below. Please submit all comments relating to the information collection requirements to NHTSA and to the Office of Management and Budget (OMB) at the address listed in the **ADDRESSES** section. Comments to OMB are most useful if submitted within 30 days of publication. See the Regulatory Analysis and Notices portion of this document for DOT's Privacy Act Statement regarding documents submitted to the Agency's dockets.

ADDRESSES: Interested parties may submit comments to the docket number identified in the heading of this document by any of the following methods:

- *Federal eRulemaking Portal:* go to <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590.
- *Hand Delivery or Courier:* Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Rm. W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9826 before coming.
- *Fax:* (202) 493-2251.

Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget at www.reginfo.gov/public/do/PRAMain. To find this particular information collection, select "Currently under Review—Open for Public Comment" or use the search function. NHTSA also requests that comments sent to the OMB also be sent to the NHTSA rulemaking docket identified in the heading of this document.

Instructions: All submissions received must include the Agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. All documents received will be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, please visit <http://www.regulations.gov>, or the Docket Management Facility at the street address listed above. Follow the online instructions for accessing the dockets via internet.

Privacy Act: Please see the Privacy Act heading under Regulatory Analyses and Notices.

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information (CBI), to NHTSA's Office of the Chief Counsel. When you send a comment containing CBI, you should include a cover letter setting forth the information specified in our CBI regulation.¹ In addition, you should submit a copy from which you have deleted the claimed CBI to the docket by one of the methods set forth above. NHTSA is currently treating electronic submission as an acceptable method for submitting CBI to NHTSA under 49 CFR part 512. If you wish to send CBI via email, please contact the attorney in the Office of the Chief Counsel at the address given below under FOR FURTHER INFORMATION CONTACT. Likewise, for CBI submissions via a secure file transfer application, an attorney in the Office of the Chief Counsel must be set to receive a notification when files are submitted and have access to retrieve the submitted files. If you wish to send CBI via a secure file transfer, please contact the attorney identified in the FOR FURTHER INFORMATION CONTACT section. At this time, regulated entities should not send a duplicate hardcopy of their electronic CBI submissions to DOT headquarters. If you have any

¹ See 49 CFR part 512.

questions about CBI or the procedures for claiming CBI, please consult the person identified in the FOR FURTHER INFORMATION CONTACT section.

FOR FURTHER INFORMATION CONTACT: Kerry Kolodziej, Office of the Chief Counsel, NCC-100, National Highway Traffic Safety Administration (telephone: 202-366-5263), email: Kerry.Kolodziej@dot.gov.

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I. Background

NHTSA relies on a wide variety of sources of information to identify potential safety issues and violations of law. Whistleblowers from the motor vehicle industry have particularized knowledge and access to information and can identify issues that otherwise may not come to light. Such whistleblowers can and have provided critical assistance to the Agency in understanding and investigating safety issues.

The Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, established important protections and incentives for motor vehicle safety whistleblowers. The Motor Vehicle Safety Whistleblower Act (Whistleblower Act), sections 24351-25352 of the FAST Act, amended the National Traffic and Motor Vehicle Safety Act of 1966 (the Safety Act) to authorize the Secretary of Transportation (the Secretary) to pay an award, subject to certain limitations, to eligible whistleblowers who voluntarily provide original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. chapter 301, which is likely to cause unreasonable risk of death or serious physical injury, if that information leads to the successful resolution of a covered action. Pub. L. 114-94, sections 24351-52, 129 Stat. 1716 (2015) (codifying “Whistleblower incentives and protections” at 49 U.S.C. 30172). The terms

“successful resolution” and “covered action” are defined by statute. The FAST Act also contains provisions designed to protect a whistleblower’s identity. 129 Stat. at 1718-19.²

Since the FAST Act was signed into law on December 4, 2015, NHTSA has received more than 150 whistleblower submissions. The information NHTSA has learned from whistleblowers has helped the Agency identify and investigate safety issues and violations of law. In one instance, a whistleblower’s critical assistance to the Agency resulted in two consent orders with civil penalties totaling \$210 million.³ Pursuant to the incentives established by the FAST Act, NHTSA granted the whistleblower the maximum award authorized under statute for the significant contributions leading to that enforcement action.⁴

In addition to the statutory whistleblower protections and incentives added by the FAST Act, Congress required NHTSA to promulgate whistleblower regulations.⁵ This proposal effectuates that requirement and is informed by the Agency’s experience working with whistleblowers over the last several years. While the Agency has provided certain information to prospective whistleblowers on its website,⁶ the Agency believes this proposed rule will provide helpful guidance to whistleblowers and other interested stakeholders on the interpretation and application of the statutory provisions. This proposed rule will also help ensure the Agency receives whistleblower information in a manner that is most useful to its safety mission and that helps it carry out the legal protections afforded to whistleblowers.

NHTSA is proposing to add a new part to its regulations, 49 CFR part 513, to further implement the whistleblower program established by the Whistleblower Act and codified at 49 U.S.C. 30172. As described in detail below, the proposal defines certain terms critical to the

² Additional protections for whistleblowers are found in 49 U.S.C. 30171. That program is administered by the Department of Labor. *See* 29 CFR part 1988. Specifically, the Department of Labor, Occupational Safety and Health Administration (OSHA) administers the whistleblower protection program under 49 U.S.C. 30171. Additional information can be found at <https://www.whistleblowers.gov>. Among other things, those provisions prohibit an employer from discharging or otherwise discriminating against an employee for providing information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of the Safety Act to NHTSA. This rulemaking is not intended to implement or otherwise affect 49 U.S.C. 30171.

³ <https://www.nhtsa.gov/press-releases/nhtsa-announces-consent-orders-hyundai-and-kia-over-theta-ii-recall>.

⁴ <https://www.nhtsa.gov/press-releases/first-whistleblower-award>.

⁵ *See* 49 U.S.C. 30172(i).

⁶ <https://www.nhtsa.gov/laws-regulations/whistleblower-program>.

operation of the whistleblower program, outlines the procedures for submitting original information to NHTSA and applying for awards, discusses the Agency's procedures for making decisions on award applications, and generally explains the scope of the whistleblower program to the public and potential whistleblowers. The proposed rule would help to facilitate the Agency's identification of information provided by whistleblowers to ensure that whistleblowers receive the protections accorded under the statute and to inform the public of those limited circumstances where information that could reasonably be expected to reveal the identity of the whistleblower may be disclosed. The Agency requests comment on all aspects of the proposed rule, as well as comment on the specific provisions and issues highlighted in the discussion below.

The provisions that later became part of the Whistleblower Act appeared in a bill that was introduced in the 113th Congress as S. 2949 on November 20, 2014, the same day that the Senate Committee on Commerce, Science, and Transportation held a hearing to examine the Takata air bag recalls.⁷ The then-Chairman discussed in his opening remarks at the Takata hearing that record fines had been levied against Toyota, GM, and Hyundai, and that "with the latest news of problems with Takata air bags, we are again faced with examining an apparent failure with serious safety consequences."⁸ The then-Chairman stated his belief that whistleblowers could help identify problems before injuries or deaths occurred.⁹ The proposed legislation was modeled in part on other "existing statutory whistleblower protections that encourage individuals to share information with the Internal Revenue Service and the Securities and Exchange

⁷ See S. Rep. 114-13, Motor Vehicle Safety Whistleblower Act, Report of the Committee on Commerce, Science, and Transportation at 3 (2015).

⁸ *Thune Opening Statement at Commerce Hearing on Takata Air Bag Defects*, available at <https://www.commerce.senate.gov/public/index.cfm/2014/11/thune-opening-statement-at-commerce-hearing-on-takata-air-bag-defects>.

⁹ *Id.* See also *Thune, Nelson Introduce Legislation to Help Prevent Auto Injuries, Deaths From Faulty Parts by Incentivizing Whistleblowers*, available at <https://www.commerce.senate.gov/public/index.cfm/2014/11/thune-nelson-introduce-legislation-to-help-prevent-auto-injuries-deaths-from-faulty-parts-by-incentivizing-whistleblowers>.

Commission.”¹⁰

In proposing these rules, NHTSA has considered other Federal whistleblower programs, including the Securities and Exchange Commission’s (SEC) rules to implement section 21F of the Securities Exchange Act of 1934 at 17 CFR 240.21F-1 through 240.21F-17¹¹ and the Commodities Future Trading Commission’s (CFTC) rules to implement section 23 of the Commodity Exchange Act at 17 CFR part 165.¹² NHTSA has also reviewed certain amendments to those rules, including recent amendments to the SEC’s Whistleblower Program Rules¹³ and 2017 amendments to the CFTC’s whistleblower process¹⁴ and has had discussions with Commission staffs regarding their whistleblower programs.¹⁵

The Agency has reviewed the U.S. Department of the Treasury’s Internal Revenue Service (IRS) program for awards for information relating to detecting underpayments of tax or violations of the Internal Revenue laws.¹⁶ The Agency also had discussions with the U.S. Department of Justice, Civil Division, Fraud Section staff regarding *qui tam* proceedings.¹⁷

These whistleblower program examples have informed NHTSA’s proposal; however,

¹⁰ Thune, Nelson Introduce Legislation to Help Prevent Auto Injuries, Deaths From Faulty Parts by Incentivizing Whistleblowers, available at <https://www.commerce.senate.gov/public/index.cfm/2014/11/thune-nelson-introduce-legislation-to-help-prevent-auto-injuries-deaths-from-faulty-parts-by-incentivizing-whistleblowers>. See also The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), Sec. 21F.

¹¹ See Proposed Rules for Implementing the Whistleblower Provisions of Section 21 F of the Securities Exchange Act of 1934, 75 FR 70488 (Nov. 17, 2010) and Securities Whistleblower Incentives and Protections, 76 FR 34300 (June 13, 2011).

¹² See Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act, 75 FR 75728 (Dec. 6, 2010) and Whistleblower Incentives and Protection, 76 FR 53172 (Aug. 25, 2011).

¹³ See Whistleblower Program Rules, 85 FR 70898 (Nov. 5, 2020).

¹⁴ See Whistleblower Awards Process, 82 FR 24487 (May 30, 2017).

¹⁵ More information regarding the SEC’s Whistleblower Program may be found at <https://www.sec.gov/whistleblower>. More information regarding the CFTC’s whistleblower program may be found at <https://www.whistleblower.gov/>.

¹⁶ See Awards for Information Relating to Detecting Underpayments of Tax or Violations of the Internal Revenue Laws, 77 FR 74758 (Dec. 18, 2012) and Awards for Information Relating to Detecting Underpayments of Tax or Violations of the Internal Revenue Laws, 79 FR 47246 (Aug. 12, 2014). For more information on the IRS whistleblower program, please see <https://www.irs.gov/compliance/whistleblower-office>.

¹⁷ *Qui tam* actions are filed under the False Claims Act, 31 U.S.C. 3729 to 3733. Relators in successful actions are entitled to receive a percentage of any settlement or judgment the government recovers. Award percentage ranges depend on whether the government participated in the action. See 31 U.S.C. 3730(d). If the government intervenes, the relator generally receives “at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.” 31 U.S.C. 3730(d)(1). If the government does not intervene, generally “the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds.” 31 U.S.C. 3730(d)(2).

there are also several important distinctions between the statutory authority and scope of these programs as compared to the statutory authority and scope of NHTSA's whistleblower program. As such, NHTSA's proposed rules are tailored to its statutory authority and programmatic considerations. The following examples of the differences between other whistleblower programs and NHTSA's authority for its whistleblower program are intended to be illustrative and not exhaustive.

One major difference is that the statutory definition of a "whistleblower" is narrower under the Whistleblower Act than in some other contexts. Under 49 U.S.C. 30172(a)(6), a whistleblower must be an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership, whereas the definition of a whistleblower under the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) programs includes "any individual."¹⁸

Furthermore, under the Whistleblower Act, the whistleblower must provide "original information relating to any motor vehicle defect, noncompliance, or violation or alleged violation of any notification or reporting requirement of [Chapter 301], which is likely to cause unreasonable risk of death or serious physical injury,"¹⁹ whereas a whistleblower under the SEC authority is an individual who provides "information relating to a violation of the securities laws"²⁰

Additionally, 49 U.S.C. 30172 requires reporting to the company's internal reporting mechanism (if the company has one), except in certain circumstances, to be eligible for an award, whereas internal reporting is not required by statute under the SEC and CFTC's programs. Rather, the rulemakings by both the CFTC and SEC appear to consider such reporting

¹⁸ See 7 U.S.C. 26(a)(7), Securities Exchange Act of 1934, 15 U.S.C. 78u-6(a)(6). See also *Final Rule, Awards for Information Relating to Detecting Underpayments of Tax or Violations of the Internal Revenue Service Laws*, 79 Fed. Reg. 47246, 47248 (Aug. 12, 2014) (discussing how in some instances the final regulation uses the word individual instead of whistleblower to mimic the statute).

¹⁹ 49 U.S.C. 30172(a)(6).

²⁰ Securities Exchange Act of 1934, 15 U.S.C. 78u-6(a)(6).

in other ways.^{21 22}

While this rulemaking is in progress, it is important to make clear that the whistleblower protection and award provisions are statutory and not contingent on a rule being in place. NHTSA has an active, ongoing whistleblower program. During the pendency of this rulemaking, the Agency encourages whistleblowers to continue to submit information to the Agency, and notes that whistleblowers are afforded the protections contained in 49 U.S.C. 30172(f). Furthermore, a whistleblower may receive an award prior to the promulgation of the regulations, and the Agency has already issued one such award as noted above. A copy of the Agency's decision granting the award and additional information on NHTSA's whistleblower program is available on the Agency's website at <https://www.nhtsa.gov/laws-regulations/whistleblower-program>.

Since enactment of the statutory whistleblower provisions, the Agency has received inquiries from interested persons regarding the statute and how to submit whistleblower information or an award request. Prior to issuing a final rule, NHTSA has explained that there is no required form of submission. In the absence of rules, NHTSA has advised potential whistleblowers that any submission should consider the statutory provisions and that they may submit materials to NHTSA's Office of the Chief Counsel. NHTSA's Office of the Chief Counsel coordinates the Agency's whistleblower program. NHTSA has specifically encouraged

²¹ See, e.g., Securities Whistleblower Incentives and Protections, 76 FR 34360 ("The final rules provide that a whistleblower who reports internally can collect a whistleblower award from the Commission if his internal report to the company or entity results in a successful covered action. In addition, the final rules provide that when determining the amount of an award, the Commission will consider as a plus-factor the whistleblower's participation in an entity's internal compliance procedures.").

²² See Whistleblower Incentives and Protections, 76 FR 53173 ("With respect to the criteria for determining the amount of an award, the Final Rules provide that while the amount of an award is within the Commission's discretion, the Commission will consider (i) a whistleblower's report of information internally to an entity's whistleblower, compliance or legal system as a factor that potentially can increase the amount of an award; and (ii) a whistleblower's interference with such internal systems is a factor that can potentially decrease the amount of an award. Rule 165.9(b)(4), (c)(3). A whistleblower may be eligible for an award for reporting original information to an entity's internal compliance and reporting systems if the entity later reports information to the Commission that leads to a successful Commission action or related action. Under this provision, all of the information provided by the entity to the Commission will be attributed to the whistleblower, which means the whistleblower will get credit--and potentially a greater award--for any information provided by the entity to the Commission in addition to the original information reported by the whistleblower. Rule 165.2(i)(3).")

prospective whistleblowers to contact the Agency via NHTSAWhistleblower@dot.gov. That email account is monitored by NHTSA's Office of the Chief Counsel and helps the Agency ensure confidentiality and route the submission to the appropriate Agency personnel for consideration. NHTSA intends to follow these same practices until a final rule is issued, which may provide more specific submission requirements as proposed.

The submission requirements contained in this proposal are designed to assist the Agency in effectively administering the whistleblower program. However, the Agency recognizes that there are trade-offs in adopting more formalized submission requirements, particularly for prospective whistleblowers that are not represented by counsel. The Agency specifically invites comments regarding this issue.

Pending the completion of the rulemaking process, NHTSA has been reviewing information provided by whistleblowers and award requests and is taking action as warranted. Much of this proposal is informed by the Agency's experience to date with its whistleblower program. In addition, the Agency received several pre-docket submissions from stakeholders, which NHTSA has taken into consideration in crafting this proposal.

Specifically, the National Whistleblower Center provided a proposal that was modeled on the SEC's and IRS's whistleblower reward laws. A copy of this submission is included in the docket.

The law firm Constantine Cannon LLP also provided submissions related to other governmental whistleblower programs and made recommendations for NHTSA's program, including its views on how to interpret certain provisions of the Whistleblower Act. A copy of these submissions will be included in the docket. Constantine Cannon had a discussion with NHTSA in April 2021 and provided written material in May 2021 regarding its thoughts on NHTSA's whistleblower program. Constantine Cannon emphasized the need for NHTSA's whistleblower program to be carefully conceived and implemented and provided several principles that should guide NHTSA as it develops rules for the program. The first principle is

that NHTSA should maximize the pool of people who can be whistleblowers and not impose impediments to award eligibility. Examples of this would include defining both current *and* former employees and contractors under the term “whistleblower,” that the whistleblower does not need to be an employee or contractor of the entity against which NHTSA brings an enforcement action, that the rules should consider a whistleblower the “original source” of the information if it materially adds to the information that NHTSA possesses, and that monetary sanctions should not be limited to just funds paid to the Treasury. Constantine Cannon also stated that NHTSA should interpret the internal-reporting requirement narrowly and in a manner that reflects practical workplace realities.

The next principle articulated by Constantine Cannon is that NHTSA should articulate a presumption of award entitlement to whistleblowers who meet established requirements and describe the specific circumstances in which that presumption will be overcome.

The final principle stated by Constantine Cannon is that NHTSA and DOT leadership must demonstrate that whistleblowers play a key role in the Agency’s enforcement work, including making it simple for potential whistleblowers to make a report, and consider creating a dedicated whistleblower office or at least dedicating staff to the whistleblower program. Constantine Cannon recommended that leadership publicly support the whistleblower program and seek opportunities to publicize the program. Constantine Cannon also stated that NHTSA should rely to the maximum extent possible on the knowledge and resources whistleblowers have to offer, which includes collaborating with the whistleblower in the investigation and prosecution of legal violations. Additionally, Constantine Cannon states that NHTSA should leverage the resources of the specialized whistleblower bar.

In late 2021, NHTSA also met with Hyundai Motor America Inc.’s (Hyundai) counsel and outside counsel, Covington and Burling LLP (Covington) regarding their thoughts on the rulemaking to implement 49 U.S.C. 30172. The stakeholders provided a presentation regarding

building an effective whistleblower program. A copy of the presentation will be included in the docket.

The presentation noted that the NHTSA program was modeled on the Dodd-Frank Wall Street and Consumer Protection Act (Dodd-Frank). They noted that while Dodd-Frank is useful, the Whistleblower Act is unique and mentioned some differences between the SEC's program and NHTSA's. They stated that NHTSA must promulgate clear and specific regulations to initiate and implement a successful whistleblower program.

They highlighted that the procedures that the SEC uses for submitting whistleblower award applications and appeared to suggest this as a model for NHTSA to consider. They mentioned that when determining an award, the most important element to consider is if the whistleblower added value. They cautioned that there is a risk that a prospective whistleblower will just utilize information in the public domain to make an award application. They also argued that the term "voluntary" should not include people who have been subpoenaed, highlighted that certain terms warrant additional enumeration in the rules and need to be carefully defined, and specifically suggested that that NHTSA should define "leads to." The stakeholders also expressed their position regarding disqualification criteria and suggested that convictions in any tribunal related to the covered action should disqualify a whistleblower from an award. They also indicated that a whistleblower must show by clear and convincing evidence that the company made them commit the alleged violation if that is a defense to disqualification.

Additionally, the stakeholders noted that the internal reporting requirement is critical to the mandatory reporting requirements of the Safety Act, that NHTSA needs to incentivize the whistleblower to report to the company first, and that NHTSA should define the exception to the internal reporting requirement narrowly. Finally, they provided their thoughts that awards should be based only on amounts collected.

While the descriptions above are not exhaustive, we appreciate the engagement from stakeholders on this important issue and look forward to receiving additional public input on this proposal.

II. Description of the Proposed Rules

Part 513 - Whistleblower Program

This proposal would establish a new part 513, within title 49 of the Code of Federal Regulations, to house NHTSA's whistleblower rules.

A. Proposed Rule § 513.1 - General

Proposed rule § 513.1 provides a general description of NHTSA's whistleblower program. Specifically, it states that part 513 describes the whistleblower program that the Agency has established to implement the Motor Vehicle Safety Whistleblower Act, 49 U.S.C. 30172; explains the procedures that the potential whistleblower will need to follow to be eligible for an award; and discusses the circumstances under which information that may reasonably be expected to reveal the identity of a whistleblower may be disclosed by NHTSA. Additionally, it cautions potential whistleblowers to read the procedures carefully because failure to take required steps within the time frames described may result in disqualification from receiving an award. The proposed rule provides contact information for NHTSA's Office of the Chief Counsel at NHTSAWhistleblower@dot.gov. It also states that, unless expressly provided for in the rules, no person is authorized to make any offer or promise, or otherwise bind the Agency, with respect to the payment of an award or the amount thereof, and makes clear that any such offer or promise will not be honored.

B. Proposed Rule § 513.2 - Definitions

1. Proposed Rule § 513.2(a) Statutory Definitions.

Proposed rule § 513.2(a) proposes that all terms used in this part have the same meaning as those defined in 49 U.S.C. 30102(a) or (b), unless otherwise defined in part 513. For example, a "manufacturer" under part 513 would mean those persons manufacturing or

assembling motor vehicles or motor vehicle equipment or importing motor vehicles or motor vehicle equipment for resale. *See* 49 U.S.C. 30102(a)(6). NHTSA notes that manufacturers encompass a number of different businesses that often are situated differently. It includes, for example, the original assembler or producer of a motor vehicle, which may be a foreign corporation operating in a foreign country or a domestic corporation. It also includes importers, which may be independent corporations domiciled in the United States or U.S. subsidiaries of foreign companies such as vehicle manufacturers. It also includes registered importers.²³

2. Proposed Rule § 513.2(b) Other terms.

49 U.S.C. 30172 defines several terms. The Agency has incorporated these definitions in proposed rule § 513.2(b) but has clarified or modified the definitions where necessary to effectuate the purposes of the statute. Proposed rule § 513.2(b) also defines additional terms, described below, that are relevant to understanding the scope of the whistleblower award program and to provide greater clarity about the operation of the program. The Agency requests comment on whether other terms should be defined, and if so, the Agency requests that the commenter provide proposed definitions for such other terms.

a. Proposed Rule § 513.2(b), Administrative action

The Agency is proposing a definition of administrative action because it is a term used in the statutory definition of “covered action.” 49 U.S.C. 30172(a)(1). Proposed rule § 513.2(b) defines the term “administrative action” as meaning all or a portion of an action, other than a judicial action, brought by NHTSA or the U.S. Department of Transportation under 49 U.S.C. chapter 301 that may result in civil penalties or other monetary payment paid to and collected by the United States government.²⁴ It specifically includes settlement agreements and consent

²³ NHTSA authorizes registered importers to import noncompliant vehicles and then bring the vehicles into compliance, repair and open recalls, certify them as compliant and hold them for a mandatory waiting period before releasing them for sale. For more information on registered importers, *see e.g.* 49 U.S.C. 30141 and 49 CFR part 592.

²⁴ As discussed further below, it is our view that civil penalties, interest, or other monetary payment referenced in the statute only refers to those monies that are payable to the United States and that are actually collected by the United States.

orders that are entered into by the Agency.

NHTSA is proposing to include a definition of the term “administrative action” because the definition of “covered action” contained in 49 U.S.C. 30172 encompasses actions by parties other than the Secretary. The Agency proposes to define such administrative actions to include those actions brought by NHTSA or the U.S. Department of Transportation, which both have jurisdiction to bring administrative actions under the Safety Act. The statutory definition of “covered action” contained in section 30172 refers to administrative or judicial actions brought by the Secretary or the Attorney General under 49 U.S.C. chapter 301. The Attorney General would bring judicial actions under 49 U.S.C. chapter 301, but any administrative actions brought under that chapter would be brought by NHTSA or the U.S. Department of Transportation.²⁵

Consent orders issued by NHTSA,²⁶ settlement agreements entered into by the Agency,²⁷ and other such agreements that the Agency is a party to in order to administratively resolve claims for civil penalties would be considered administrative actions.²⁸ Administrative actions could also include other final agency actions, such as determination letters that a deferred penalty agreed to under a consent order is due. The Agency believes that this will best effectuate the intent of Congress to incentivize whistleblowers to come forward with information that may lead to an award, as these types of agreements have most often been the basis of civil penalties exceeding \$1,000,000.

Furthermore, unlike the SEC,²⁹ NHTSA does not have administrative law judges who

²⁵ See 49 U.S.C. 30163 (focusing on civil actions).

²⁶ See, e.g., <https://www.nhtsa.gov/press-releases/nhtsa-announces-consent-orders-hyundai-and-kia-over-theta-ii-recall>; <https://www.nhtsa.gov/press-releases/nhtsa-announces-consent-order-daimler-trucks-north-america>.

²⁷ Although these settlement agreements did not result in collected monetary sanctions of over one million dollars, these are examples of settlement agreements entered into by the Agency recently: *In re Northwest Chrysler Jeep Dodge Ram, AQ17-004 Settlement Agreement*, available at <https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-11/AQ17-004-Northwest-Settlement-Agreement-08-19-2020-tag.pdf>; and *In Re Navistar Recalls 18V-315, 18V-316 Settlement Agreement*, available at https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/navistar_settlement_agreement_2019-12-18.pdf.

²⁸ These could encompass such things as amended consent orders requiring additional civil penalties. See *In re FCA US LLC AQ14-003, Amendment to July 25, 2015 Consent Order*, available at <https://www.nhtsa.gov/sites/nhtsa.gov/files/2021-11/AQ14-003X-FCA-Consent-Order-Amendment-EWR-12-8-2015-tag.pdf>.

²⁹ See, e.g., *How Investigations Work*, available at <https://www.sec.gov/enforce/how-investigations-work.html>.

issue initial decisions that include findings of fact and legal conclusions. Therefore, it is NHTSA's belief that Congress did not mean "administrative action" in the sense of a formal administrative proceeding, such as a proceeding subject to 5 U.S.C. 554. NHTSA's main method of resolving actions that result in a payment of a civil penalty has been through consent orders and settlement agreements, and thus it makes sense for those actions to be included in the types of actions that may form the basis for a whistleblower award.

b. Proposed Rule § 513.2(b), Agency

Proposed Rule § 513.2(b) defines the term "Agency" as referring to NHTSA.

c. Proposed Rule § 513.2(b), Collected Monetary Sanctions

"Monetary sanctions" is defined in section 30172(a)(2), but whistleblower awards can only be paid from "collected monetary sanctions" under section 30172(b)(1). This proposed definition clarifies that the term "collected monetary sanctions" means monies, including penalties and interest, ordered or agreed to be paid and that have been collected by the United States pursuant to the authority in 49 U.S.C. 30165 or under the authority of 49 U.S.C. 30170. This is consistent with the express terms of the statute, which provides: "Any amount payable [to a whistleblower] . . . shall be paid from the monetary sanctions collected, and any monetary sanctions so collected shall be available for such payment." 49 U.S.C. 30172(b)(2).

The Agency is aware that some stakeholders have advocated for the position that restitution to parties other than the United States ordered in cases should be considered monetary sanctions. The Agency believes that "collected monetary sanctions" cannot reasonably be construed to include such restitution intended to directly compensate victims and other affected third parties (as opposed to penalties paid to the United States).

Likewise, in some of the Agency's settlements, companies agree to pay a certain amount toward performance obligations, such as investing in safety data analytics³⁰ or development of a

³⁰ See *In Re Daimler Trucks North America LLC, AQ18-002 Consent Order, Para. 12(c)*, available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/aq18-002_consent_order_executed.pdf.

testing laboratory.³¹ NHTSA does not view these performance obligations as constituting a “collected” monetary sanction. In those situations where the agreement allows for collection of the performance obligation amounts in the form of a monetary payment to the United States government as a consequence of the violation of the consent order, and the violating company does pay that sum to the United States, the Agency’s view is that if all of these conditions are met, such amount could be considered a collected monetary sanction. Likewise, in those cases where the agreement specifies that if the total performance amount is not spent and the company is liable for a cash payment to NHTSA for the balance of the unspent portion,³² and the company pays such amount to NHTSA, that could be considered a collected monetary sanction.

NHTSA has also used “deferred penalties” or “abeyance amounts” in several of its consent orders.³³ These generally are agreed amounts to be paid as a monetary penalty in the event that the company violates the consent order, the Safety Act, or the regulations thereunder. It is NHTSA’s view that these sums only become “collected monetary sanctions” if and when the deferred penalty or abeyance amount is actually paid to the United States government.

These views are consistent with the statutory requirement that: “Any amount payable [to a whistleblower] . . . shall be paid from the monetary sanctions collected, and any monetary sanctions so collected shall be available for such payment.” 49 U.S.C. 30172(b)(2). Penalties allocated to performance obligations and deferred penalties that have not been paid to the United States government are neither “collected” nor “available for [] payment.”

The Agency anticipates that in circumstances where deferred amounts or unspent performance obligation balances become due and are collected by the United States, NHTSA will post a notice on its website if such action occurs.

³¹ See *In re Hyundai Motor America, Inc. RQ17-004, NHTSA Recall No. 15V-568, NHTSA Recall No. 17V-226, Consent Order, Para. 21*, available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/rq17-004_hyundai_consent_order_executed_11272020.pdf.

³² See *In re Kia Motors America, RQ17-003, NHTSA Recall 17V-224, Consent Order, Para. 26*, available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/rq17-003_kia_consent_order_executed_11272020.pdf.

³³ See, e.g., *In Re Daimler Trucks North America LLC, AQ18-002 Consent Order, Para. 12(b)*, available at https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/aq18-002_consent_order_executed.pdf.

d. Proposed Rule § 513.2(b), Contractor

Consistent with 49 U.S.C. 30172(a)(6), proposed rule § 513.2(b) defines “contractor” as an individual presently or formerly providing goods or services to a motor vehicle manufacturer, part supplier, or dealership pursuant to a contract. The Agency believes that the definition must include both present and former contractors to maximize the reach and effectiveness of the whistleblower program. For example, if a contractor were terminated by his or her company after reporting safety issues, it would not serve the purpose of the Whistleblower Act to bar such a contractor from an award simply because he or she no longer works for the company.

e. Proposed Rule § 513.2(b), Covered Action

Under the statute, the term “covered action” means “any administrative or judicial action, including any related administrative or judicial action, brought by the Secretary or the Attorney General under this chapter that in the aggregate results in monetary sanctions exceeding \$1,000,000.” Proposed rule § 513.2(b) is based on the definition of covered action from section 30172(a)(1) and clarifies how the above \$1,000,000 threshold can be met.

The Agency tentatively believes that since the statute specifies that the action is brought by the Secretary or Attorney General “under this chapter,” the statute is referring solely to 49 U.S.C. chapter 301 and the regulatory obligations promulgated under 49 U.S.C. chapter 301, as the Whistleblower Act was codified as part of 49 U.S.C. chapter 301. The Agency tentatively believes that the plain language of the statute is clear, and that it does not have discretion under the statute to consider actions taken under other statutes (such as separate criminal statutes) as part of a “covered action,” even if such actions involve vehicle safety issues and/or are based on facts common to an action taken under 49 U.S.C. chapter 301. One could argue that the phrase “including any related administrative and judicial action” could be read as referring to actions outside of chapter 301 of title 49, United States Code. However, the Agency tentatively believes that its proposal to limit “covered actions” to chapter 301 or regulations thereunder is compelled

by the statute.³⁴

“[R]elated action” under 49 U.S.C. chapter 301 is given effect by considering two actions under 49 U.S.C. chapter 301. For example, if NHTSA pursues two separate enforcement actions for violations of 49 U.S.C. chapter 301, or regulations thereunder, against two different companies (for example, a supplier and a vehicle manufacturer) based on the same facts provided by a whistleblower, in that case, the two separate actions would be related.³⁵ If the monetary sanctions collected for those two actions exceeded one million dollars in aggregate, the two actions together would be considered a “covered action.”

The purpose of 49 U.S.C. chapter 301 is “to reduce traffic accidents and deaths and injuries resulting from traffic accidents.” 49 U.S.C. 30101. The whistleblower program was designed to reward employees or contractors who “blow the whistle” on motor vehicle defects, noncompliance, or violations or alleged violations of any notification or reporting requirement of the chapter which is likely to cause an unreasonable risk of death or serious physical injury, and thus is closely aligned with the purposes of 49 U.S.C. chapter 301.

While section 30172(c)(2)(A) generally provides that no award shall be made to any whistleblower who is convicted of a criminal violation “related to the covered action” for which the whistleblower otherwise could receive an award under this section, NHTSA tentatively does not believe that the use of the word “related” in that context can be extrapolated to the meaning of “related” in 49 U.S.C. 30172(a)(1). That is, it is the Agency’s tentative view that the whistleblower cannot be issued an award percentage of monies paid by a company for criminal violations of statutes other than the Safety Act. Such a reading would be inconsistent with the requirement of the statute that the action be brought “under this chapter.” For example, a criminal action for wire fraud under 18 U.S.C. 1343 is not an action under the Safety Act (49

³⁴ In the event a court found ambiguity in the statute, we believe that our interpretation is the clearest reading of the statute and makes the most sense for the reasons described in this proposal.

³⁵ In fact, NHTSA’s first whistleblower award came in the context of enforcement actions resulting in consent orders with two companies (Hyundai and Kia). See https://www.nhtsa.gov/sites/nhtsa.gov/files/2022-02/whistleblower-decision-letter-RQ17-003-Kia-RQ17-004-Hyundai_web.pdf.

U.S.C. chapter 301). However, the Agency tentatively believes a criminal action brought under 49 U.S.C. 30170, the criminal penalties provision of the Safety Act, would be a covered action under the Whistleblower Act.³⁶

Unlike the SEC³⁷ or CFTC,³⁸ NHTSA does not have a fund set aside from which to pay awards. Rather, it appears that the money to pay whistleblowers was intended to come from the entity that paid the penalty. The FAST Act, section 31202, appropriates to the Highway Trust Fund amounts equivalent to “covered motor vehicle safety penalty collections.” The section defines “covered motor vehicle safety penalty collections” as any amount collected in connection with a civil penalty under 30165 of title 49, United States Code, *reduced by any award authorized by the Secretary of Transportation to be paid to any person in connection with information provided by such person related to a violation of chapter 301 of such title which is a predicate to such civil penalty* (emphasis added). In addition, 49 U.S.C. 30172(b)(2) explicitly provides: “Any amount payable [to a whistleblower] . . . shall be paid from the monetary sanctions collected, and any monetary sanctions so collected shall be available for such payment.” Based on this, it is our view that whistleblowers are paid out of the money collected from the entity that paid a Safety Act penalty or fine.³⁹ The Agency recognizes that actions under 49 U.S.C. 30170 are not civil penalty actions brought under 49 U.S.C. 30165 and the mechanism for funding whistleblower awards under 49 U.S.C. 30170 does not appear to be defined by statute. The Agency therefore requests comment on its interpretation of including

³⁶ Section 30170(a)(1) provides for criminal liability for falsifying or withholding information. It states, “A person who violates [18 U.S.C 1001] with respect to the reporting requirements of section 30166, with the specific intention of misleading the Secretary with respect to motor vehicle or motor vehicle equipment safety related defects that have caused death or serious bodily injury to an individual (as defined in section 1365(g)(3) [1] of title 18), shall be subject to criminal penalties of a fine under title 18, or imprisoned for not more than 15 years, or both.”

³⁷ See 15 U.S.C. 78u-6(b)(2) (stating that any whistleblower award shall be paid from the “Fund”) and 15 U.S.C. 78u-6(a)(2) (defining the “Fund” as the Securities and Exchange Commission Investor Protection Fund.”).

³⁸ See 7 U.S.C. 26(g)(2) (establishing a revolving fund to be known as the “Commodity Futures Trading Commission Customer Protection Fund”).

³⁹ The Agency’s position is also supported by the cost estimate prepared by the Congressional Budget Office included in S. Rep. 114-13, Motor Vehicle Safety Whistleblower Act, Report of the Committee on Commerce, Science, and Transportation, p. 4 (2015), which stated, “Basis of estimate: S. 304 would authorize the Secretary of Transportation at his discretion, to award to a whistleblower up to 30 percent of any civil penalty that exceeds \$1 million and is collected from a company that manufactures motor vehicles or parts with serious defects or that violates certain safety laws.”

actions under 49 U.S.C. 30170 as an action “under this chapter.”

As a practical matter, NHTSA also does not have ready access to the information that would be needed to make a decision about an award sought for monies collected from an action brought under a statute other than the Safety Act. For example, NHTSA may be unable to evaluate the significance of the original information provided by the whistleblower to the successful resolution of a criminal action for wire fraud or other statute outside NHTSA’s jurisdiction and expertise. Likewise, NHTSA may be unaware of “the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in” an action brought under statutes outside NHTSA’s jurisdiction. NHTSA may have limited or no involvement in such an action. Therefore, NHTSA’s ability to make an award determination may have to rely on the Department of Justice to reveal information regarding its internal processes and other information that it ordinarily keeps confidential, over which release NHTSA does not have control. These practical considerations support the plain language reading of the statute as limited to actions under the Safety Act.

In sum, the Agency tentatively does not believe that a covered action includes any action brought by the U.S. Department of Justice under any statute other than those contained in 49 U.S.C. chapter 301 or regulation issued thereunder. We are cognizant that this issue is of particular interest given the potential implications on the amount of a whistleblower award, or whether any award is available in some cases, and we invite comments on our views.

Additionally, the definition of “covered action” in proposed rule § 513.2(b) clarifies that NHTSA can bring an action, since the Secretary’s authority under 49 U.S.C. chapter 301 has been delegated to the Administrator of NHTSA. 49 CFR 1.95(a). In practice, civil penalty actions for violations of the Safety Act and regulations thereunder resulting in monetary sanctions exceeding \$1,000,000 are generally accomplished by settlement agreements with NHTSA or consent orders issued by the NHTSA Administrator.⁴⁰

⁴⁰ See, e.g., <http://www.nhtsa.gov/Laws-&-Regulations/Civil-Penalty-Settlement-Amounts>.

The definition of “covered action” in proposed rule § 513.2(b) also clarifies that an action under 49 U.S.C. chapter 301 includes actions for violations of regulations promulgated under 49 U.S.C. chapter 301. Including these clarifications in the definition of “covered action” would better effectuate the purposes of the Motor Vehicle Safety Whistleblower Act.

The proposed definition of “covered action” also clarifies that the over \$1,000,000 threshold can be satisfied if the total amount of monetary sanctions paid by multiple defendants or parties and collected by the United States totals more than \$1,000,000 in the covered action. That is, the Agency proposes that multiple smaller sanctions paid by different parties in the same action could be added up to exceed the more than \$1,000,000 threshold. Similarly, the Agency also believes that multiple smaller sanctions paid by different parties in the related actions (or the same party, such as in the case of an amended consent order that requires payment of additional penalties or later payment of penalties held in abeyance) could be included to exceed the more than \$1,000,000 threshold.⁴¹ The Agency does not want to foreclose a whistleblower’s eligibility for an award in these situations.

f. Proposed Rule § 513.2(b), Dealership

The Agency is proposing a definition of “dealership” because it is a term used in the statutory definition of whistleblower. 49 U.S.C. 30172(a)(6). The term “dealership” appears only in 49 U.S.C. 30172 and does not appear in any other provision of 49 U.S.C. chapter 301. Given the purpose of the whistleblower provisions, the Agency proposes to define “dealership” using a broader definition than the statutory definition of “dealer” found in 49 U.S.C. 30102(a)(2). Under this proposal, a “dealership” means a person selling and distributing motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale. The definition is not limited to a dealership selling

⁴¹ The Agency believes that in order for these amounts to be counted to exceed the more than \$1,000,000 threshold, those amounts need to be connected to the original information provided by the whistleblower. For example, if there was a whistleblower who received an award in connection with the initial civil penalty action, it is our tentative view that such whistleblower would not be eligible for an award percentage of any amount collected from the deferred/abeyance amounts, unless the whistleblower provided original information that led to the Agency determining the deferred penalty payment was required.

new motor vehicles, as is the statutory definition of “dealer.” For example, an employee of a used car dealer could identify and bring to the Agency’s attention a safety defect in a vehicle that has not been timely recalled. The Agency believes it is appropriate to include used car dealerships within the scope of the whistleblower provisions to best effectuate the incentives and protections of the statute.

g. Proposed Rule § 513.2(b), Employee

The Agency is proposing a definition of “employee” because it is a term used in the statutory definition of whistleblower. 49 U.S.C. 30172(a)(6). Proposed rule § 513.2(b) defines “employee” as an individual presently or formerly employed by a motor vehicle manufacturer, part supplier, or dealership. The Agency believes that the definition should include both present and former employees to maximize the reach and effectiveness of the whistleblower program. It would not serve the purpose of the Whistleblower Act to bar a former employee from an award simply because he or she no longer works for the motor vehicle manufacturer, part supplier, or dealership.

The Agency requests comment on whether an owner of a motor vehicle manufacturer, part supplier, or dealership should be considered an “employee” of such entity, and if so, in what situations it would be appropriate to consider such person as an “employee.” Relevant considerations include the ability of an owner to address potential safety issues and violations of law within that entity, and the potential for an owner to have information regarding a different entity. For example, an owner of a dealership may have information regarding safety-related defects or noncompliances with applicable Federal Motor Vehicle Safety Standard (“FMVSS”) in vehicles for vehicles provided to it by a vehicle manufacturer. Another example is that an owner of a registered importer may have information about potential Safety Act violations committed by another registered importer.

h. Proposed Rule § 513.2(b), Independent Knowledge or Analysis

Section 30172(a)(3) contains a definition of original information. Section 30172(a)(3)(A) states that original information is information that “is derived from independent knowledge or analysis of an individual.”

The Agency considered the definitions of independent knowledge contained in the SEC’s and CFTC’s whistleblower regulations in crafting its proposed definition.⁴² Proposed rule § 513.2(b) defines “independent knowledge” as factual information in the potential whistleblower’s possession that is not generally known or available to the public and is not already known to NHTSA. Publicly available sources include both sources that are widely disseminated, such as corporate press releases and filings, and media reports, as well as sources that, while not widely disseminated, are generally available to the public, such as court filings and documents obtained through Freedom of Information Act requests.

The proposed definition does not require that a potential whistleblower have direct, first-hand knowledge of potential violations. The proposed definition states that the potential whistleblower may gain independent knowledge from the potential whistleblower’s experiences, communications and observations in the potential whistleblower’s business or social interactions. Thus, for example, under proposed rule § 513.2(b), a potential whistleblower may have “independent knowledge” of information even if that knowledge derives from facts or other information that has been conveyed to the potential whistleblower by third parties. The Agency preliminarily believes that defining “independent knowledge” in this way best effectuates the purpose of the Whistleblower Act, as an employee or contractor may learn about potential violations of the Safety Act without being personally involved in the conduct and the information would not otherwise come to NHTSA’s attention.

The Agency has also proposed rule § 513.2(b) to define the phrase “analysis” to mean the potential whistleblower’s examination and evaluation of information that may be generally or publicly available, but which reveals information that is not generally known or available to the

⁴² See 17 CFR 165.2(g) and 17 CFR 240.21F-4(b)(2).

public. The proposed definition of “analysis” is similar to that used in the SEC’s whistleblower regulations as well as the CFTC’s whistleblower regulations.⁴³ This proposed definition recognizes that potential whistleblowers could review publicly available information and, through their individual evaluation and examination, provide assistance to the Agency in uncovering violations of the Safety Act.

In 2020, the SEC issued final interpretive guidance regarding the term “analysis,” specifically with respect to publicly available information.⁴⁴ The SEC stated, “the evaluation of publicly available information reveals information that is ‘not generally known or available to the public’---and therefore is ‘analysis’... where “(1) The whistleblower’s conclusion of possible securities violations derives from multiple sources, including sources that, though publicly available are not readily identified and accessed by a member of the public without specialized knowledge, unusual effort, or substantial cost; and (2) these sources collectively raise a strong inference of potential securities law violation that is not reasonably inferable by the Commission from any of the sources individually.”

Like the SEC, NHTSA believes that “analysis” requires the potential whistleblower to do more than merely point the Agency to public information assembled by the potential whistleblower. The potential whistleblower must bring forth some additional evaluation, assessment or insight, as the “analysis” must reveal information that is not generally known or available to the public. NHTSA may determine that a whistleblower’s examination and evaluation of publicly available information reveals information that is “not generally known or available to the public” and therefore is “analysis” where: (1) The whistleblower’s conclusion of any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of this chapter, which is likely to cause unreasonable risk of

⁴³ See 17 CFR 240-21F-4(b)(3) and 17 CFR 165.2(c) (defining analysis as the whistleblower’s “examination and evaluation of information that may be publicly available, but which reveals information that is not generally known or available to the public.”).

⁴⁴ *Whistleblower Program Rules*, 85 FR 70898, 70929-31 (Nov. 5, 2020).

death or serious physical injury, derives from multiple sources, including sources that, although publicly available, are not readily identified and accessed by a member of the public without specialized knowledge, unusual effort, or substantial cost; and (2) these sources collectively raise a strong inference of an existence of a motor vehicle defect, noncompliance, or any violation of a notification or reporting requirement that is likely to cause unreasonable risk of death or serious physical injury that is not reasonably inferable by the Agency from any of the sources individually.

The proposed rule makes it clear that the analysis must be the potential whistleblower's own analysis, whether done alone or in combination with others.⁴⁵ The proposed rule recognizes that analysis is often the product of collaboration among two or more individuals. However, the Agency believes that only those individuals who are employees or contactors of a motor vehicle manufacturer, part supplier, or dealership could be eligible for an award if they meet the other requirements of 49 U.S.C. 30172 and regulations thereunder.

The definition of "independent knowledge or analysis" in proposed rule § 513.2(b) further provides that information will not be considered to derive from an individual's "independent knowledge or analysis" in some situations. The Agency requests comment on whether these are appropriate exclusions and whether additional exclusions should be added.

The first proposed exclusion is for information that was obtained solely through a communication that is subject to the attorney-client privilege⁴⁶ or work product doctrine.⁴⁷ The Agency recognizes that the both the SEC and CFTC whistleblower programs would not exclude the disclosure if it was authorized by the applicable Federal or State attorney conduct rules,⁴⁸ and requests comment on whether it should include a similar carve-out in its regulations.

The Agency recognizes that there are some exceptions to these various privileges, such as

⁴⁵ The CFTC has defined "independent analysis" in a similar manner, 17 CFR 165.2(h), as has the SEC, 17 CFR 240.21F-4(b)(3).

⁴⁶ This term refers to the protection that applicable law provides for confidential attorney-client communications.

⁴⁷ This term refers to the protection that applicable law provides for material prepared in anticipation of litigation or for trial.

⁴⁸ 17 CFR 240.21F-4(i), (ii) and 17 CFR 165.2(g)(2), (3).

Federal Rule of Civil Procedure 26(b)(3) (providing that materials prepared in anticipation of litigation may be discovered by an adverse party if the party shows “substantial need” and “undue hardship”), and the crime-fraud exception to the attorney-client privilege. However, the Agency has concerns that it will not be able to tell whether an exception would apply at the outset. Furthermore, NHTSA anticipates that attorneys in its Office of the Chief Counsel, in conjunction with engineers or others from the program office, will be reviewing submissions made by potential whistleblowers. The rule as proposed would help implement 49 U.S.C. 30172 in a manner consistent with the State bar ethics rules governing the professional responsibilities of lawyers. At this time, NHTSA has determined that we cannot review materials protected by attorney-client privilege pursuant to the District of Columbia Rules of Professional Conduct. This determination is based on our understanding of the District of Columbia Bar’s Ethics Opinion 318: Disclosure of Privileged Material by Third Party.

Additionally, compliance with 49 U.S.C. chapter 301 and regulations thereunder is promoted when individuals, corporate officers, and others consult with counsel about potential issues. This important benefit could be undermined if an employee or contractor was able to disclose the company’s attorney-client privileged information or attorney work product to the Agency.

The proposed exclusion is not intended to preclude an individual who has independent knowledge or analysis of potential Safety Act violations from becoming a whistleblower if that person chooses to consult with an attorney or is an attorney. Rather, this exclusion would prohibit an employee or contractor from revealing attorney-client privileged or work product information that they learned of solely through a privileged communication.

The second proposed exclusion is for information that was obtained in a means or manner that is determined by a United States Federal court or State court to violate applicable Federal or State criminal law. The Agency recognizes that it is likely that a violation determination would not yet have been made at the time a whistleblower submits documents or other information to

NHTSA, and the Agency specifically requests comment on this proposal. As one measure, the Agency could caution the whistleblower against submission of this information if there is reason to believe that the information might be determined to violate applicable Federal or State criminal law.

One rationale for the exclusion is that a potential whistleblower should not be rewarded for violating a Federal or State criminal law. On the other hand, it is possible that companies could threaten potential whistleblowers with criminal prosecution for theft, blackmail, extortion, or other such actions if the whistleblower provides or attempts to provide information to NHTSA. Threats of criminal prosecution would likely deter a whistleblower from reporting violations to NHTSA and such deterrence may be contrary to public policy.

NHTSA is not proposing to categorically exclude information that may be provided to it in possible violation of judicial or administrative orders, such as protective orders in private litigation. As explained in a NHTSA Enforcement Guidance Bulletin, “To the extent protective orders, settlement agreements, or other confidentiality provisions prohibit information obtained in private litigation from being transmitted to NHTSA, such limitations are contrary to Rule 26 of the Federal Rules of Civil Procedure, its state corollaries, and sound principles of public policy.”⁴⁹ However, potential whistleblowers must exercise caution to avoid violating a legally binding order, and may wish to consult with private counsel before providing NHTSA with information covered by any such order. In the event of uncertainty (such as in the absence of a protective order provision authorizing disclosure to relevant regulatory authorities), NHTSA suggests that potential whistleblowers who are aware of material protected by a protective order not provide the documents subject to the order, but rather disclose the existence of such documents without revealing the substance of the material under the protective order.

⁴⁹ *NHTSA Enforcement Guidance Bulletin 2015–01: Recommended Best Practices for Protective Orders and Settlement Agreements in Civil Litigation*, 81 FR 13026 (Mar. 11, 2016).

The Agency is also aware that companies may try to use confidentiality agreements to prevent whistleblowers from making disclosures to NHTSA, which would also appear to be contrary to public policy.⁵⁰ In such situations, the potential whistleblower may wish to consult with private counsel. NHTSA does not believe that a potential violation of a confidentiality agreement by the whistleblower should act as an exclusion under this proposed rule.⁵¹

NHTSA is requesting comment on whether there should be other proposed exclusions, including exclusions similar to those contained under “independent knowledge” and/or “independent analysis” in the whistleblower programs of the SEC⁵² and CFTC.⁵³

For example, it is the Agency’s tentative view that it will not exclude potential whistleblowers where the potential whistleblower obtained the information solely because the potential whistleblower was or is an officer, director, trustee or partner of an entity and another person informed the potential whistleblower of allegations relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. chapter 301 or regulation thereunder. The SEC and the CFTC have an exception for the exclusion where the person had a reasonable basis to believe that disclosure of the information to the Commission is necessary to prevent the relevant entity from engaging in conduct that is likely to cause substantial injury to the financial interest or property of the entity or investors.⁵⁴ For whistleblower disclosures made under the Whistleblower Act, in light of

⁵⁰ NHTSA notes that the SEC’s Exchange Act Rule 21F-17(a) prohibits any person from taking any action to prevent an individual from contacting the SEC directly to report a possible securities law violation. The rule states that “[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement . . . with respect to such communications.” According to the SEC’s 2021 Report, the Commission has brought 14 enforcement actions or administrative proceedings involving violations of Rule 21F-17. U.S. Securities and Exchange Commission, 2021 Annual Report to Congress, Whistleblower Program, p. 26, *available at* <https://www.sec.gov/files/owb-2021-annual-report.pdf>. See also *SEC v. Collector’s Coffee, Inc.*, 2021 WL 3082209, *3 (S.D.N.Y. July 21, 2021) (noting that certain contractual confidentiality provisions would be illegal, and therefore unenforceable). The Agency requests comment on whether it should issue a rule similar to that of Rule 21F-17.

⁵¹ The SEC’s rationale for Rule 21F-17 was that it was necessary and appropriate because efforts to impede an individual’s direct communications with Commission staff about a possible securities law violation would conflict with the statutory purpose of encouraging whistleblowers to report to the Commission. See *Securities Whistleblower Incentives and Protections*, 76 FR 34300, 34252 (June 13, 2011).

⁵² 17 CFR 240.21F-4(b)(4).

⁵³ 17 CFR 165.2(g).

⁵⁴ 17 CFR 240.21F-4(b)(4)(v)(A) and 17 CFR 165.2(g)(7)(i).

potential risks to safety, the Agency believes that encouraging disclosure to the Agency as soon as possible would be the better course. The Agency recognizes that such individuals may have ready access to significant information relevant to these issues and does not want to discourage would-be whistleblowers from reporting out of concern that this exclusion might apply. We note that a person in such a position often may be able to piece together information in a unique way or provide additional relevant information and may not just simply be a conduit for passing on information obtained from another person.

We are also considering whether there should be an exclusion for situations in which the potential whistleblower learned the information by participating in or observing established processes of the motor vehicle manufacturer, part supplier, or dealership to identify, report, and address possible violations of 49 U.S.C. chapter 301 or a regulation thereunder. The Agency specifically requests comment on this issue.

Unlike the whistleblower programs of the SEC and CFTC, Congress evidenced an intent in the Whistleblower Act for internal reporting to be an important prerequisite to award eligibility, except in circumstances where reporting may not be appropriate.⁵⁵ The Agency recognizes that companies may view allowing information learned from participating in or observing established processes to be considered “independent knowledge or analysis” as circumventing or undermining the proper operation of the company’s internal processes for investigating and responding to potential violations of law. However, it is critical that the Agency learn important safety information as quickly as it can.⁵⁶ We also note that a company’s

⁵⁵ S. Rep. 114-13, Motor Vehicle Safety Whistleblower Act, Report of the Committee on Commerce, Science, and Transportation at 7 (2015).

⁵⁶ Even the SEC and CFTC allow this type of information to be excepted from exclusion if at least 120 days have elapsed since the whistleblower provided the information to the relevant entity’s audit committee, chief legal officer, chief compliance officer (or their equivalents), or the whistleblower’s supervisor, or since the whistleblower received the information, if the whistleblower received it under circumstances indicating that the entity’s audit committee, chief legal officer, chief compliance officer (or their equivalents), or the whistleblower’s supervisor was already aware of the information. *See, e.g.*, 17 CFR 240.21F-4(b)(4)(v)(C) and 17 CFR 165.2(g)(7)(iii). The Agency does not think it prudent to have a 4-month waiting period for this type of information for a whistleblower report to become eligible, especially since the issues under the Whistleblower Act may relate to unreasonable risk of death or serious physical injury.

efforts to come into future compliance does not negate prior violations of law. We encourage comments on this issue.

i. *Proposed Rule § 513.2(b), Motor Vehicle Defect*

NHTSA is proposing a definition of “motor vehicle defect” because it is a term that is included in the statutory definition of whistleblower. 49 U.S.C. 30172(a)(6). Proposed rule § 513.2(b) defines “motor vehicle defect” as a defect in a motor vehicle or item of motor vehicle equipment.

Under proposed rule § 513.2(a), the term “defect” would have the same meaning as that contained in 49 U.S.C. 30102(a)(3), which is that a defect includes any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment; “motor vehicle” would have the same definition as in 49 U.S.C. 30102(a)(7), which states that a motor vehicle “means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line;” and “motor vehicle equipment” would have the same meaning as defined in 49 U.S.C. 30102(a)(8), which defines motor vehicle equipment as “(A) any system, part, or component of a motor vehicle as originally manufactured; (B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or (C) any device or an article or apparel, including a motorcycle helmet and excluding medicine or eyeglasses prescribed by a licensed practitioner, that-- (i) is not a system, part, or component of a motor vehicle; and (ii) is manufactured, sold, delivered, or offered to be sold for use on public streets, roads, and highways with the apparent purpose of safeguarding users of motor vehicles against risk of accident, injury, or death.” The Agency has also proposed this definition to make it clear that the term “motor vehicle defect” also encompasses defects in all motor vehicle equipment. NHTSA’s authority over motor vehicle equipment, in its many forms, is expressed unequivocally in the Safety Act. 49 U.S.C. 30102(a)-(b).

There are several reasons why the Agency believes the term “motor vehicle defect” should be defined as including defects in motor vehicle equipment. First, if the Agency were to interpret the term strictly as a “defect in a motor vehicle,” one could argue that “replacement equipment”⁵⁷ is not covered, since this type of motor vehicle equipment was not installed in or on a motor vehicle at the time of delivery to the first purchaser. We believe that Congress intended to provide whistleblower protection and award eligibility not only to those whistleblowers who provide original information concerning defects or noncompliances of “original equipment,”⁵⁸ but also replacement motor vehicle equipment. Congress has provided that a whistleblower can be an employee or contractor of a part supplier, which was defined by the statute as a “manufacturer of motor vehicle equipment.” Both original equipment items and replacement equipment items are motor vehicle equipment. It does not seem to follow that a whistleblower’s potential eligibility for an award and statutory identity protection depends on where a particular motor vehicle equipment item, such as an air bag, goes. For example, the same defective air bag could be placed in a motor vehicle, or it could be sold as a replacement part. Furthermore, there are other types of motor vehicle equipment, such as motorcycle helmets, that are not systems, parts, or components of motor vehicles, but nevertheless are motor vehicle equipment. For these reasons, the Agency believes that the proposed definition of “motor vehicle defect,” which would encompass defects in both motor vehicles and motor vehicle equipment, better effectuates the statute.

j. *Proposed Rule § 513.2(b), Noncompliance*

We are proposing a definition of “noncompliance” as it is a term that is included in the statutory definition of whistleblower. Proposed rule § 513.2(b) states that noncompliance occurs

⁵⁷ “Replacement equipment” is defined as “motor vehicle equipment that is not original equipment.” 49 U.S.C. 30102(b)(1)(D).

⁵⁸ “Original equipment” means “motor vehicle equipment (including a tire) installed in or on a motor vehicle at the time of delivery to the first purchaser.” 49 U.S.C. 30102(b)(1)(C). Under a statutory definition, a defect in original equipment or a noncompliance of original equipment with an applicable motor vehicle safety standard “is deemed to be a defect or noncompliance of the *motor vehicle* in or on which the equipment was installed at the time of delivery to the first purchaser.” 49 U.S.C. 30102(b)(1)(F) (emphasis added).

when a motor vehicle or item of motor vehicle equipment does not comply with an applicable motor vehicle safety standard. This definition aligns with the term noncompliance as it is used in sections 30118-30120 of the Safety Act.

k. *Proposed Rule § 513.2(b), Original Information*

Proposed rule § 513.2(b) begins with the definition of “original information” in section 30172(a)(3) but adds the word “Agency” for the purposes of clarity. Proposed rule § 513.2(b) defines “original information” as information that is derived from the independent knowledge or analysis of an individual, is not known to the Secretary or Agency from any other source, unless the individual is the original source of the information; and is not exclusively derived from an allegation made in a judicial or an administrative action, in a governmental report, a hearing, an audit, or an investigation, or from the news media, unless the individual is a source of the information.

Some definitions of the constituent terms in the definition of original information, such as “independent knowledge or analysis,” have been proposed in proposed rule § 513.2(b) so as to further describe when an individual provides “original information.”

Proposed rule § 513.2(b) also adds the requirement that the original information be provided to the Agency for the first time after December 4, 2015. December 4, 2015 is the date of enactment of the FAST Act. This limitation is based on the rule of construction contained in section 24352(b) of the FAST Act.

Although the FAST Act authorizes the Secretary to pay whistleblower awards on the basis of original information that is submitted to the Secretary prior to the promulgation of rules implementing section 30172 (assuming all other requirements for an award are met),⁵⁹ it is our tentative conclusion that section 30172 does not authorize the Secretary to retroactively pay awards based on information submitted before the effective date of the statute. Section

⁵⁹ See Section 24352(b)(2) of the FAST Act, Public Law 114-94 (stating that a whistleblower may receive an award prior to the Secretary promulgating the regulations under subsection (i)).

24352(b)(1) of the FAST Act, Public Law 114-94, provides that “Information submitted to the Secretary of Transportation by a whistleblower in accordance with the requirements of section 30172 of title 49, United States Code, shall not lose its status as original information solely because the whistleblower submitted the information prior to the effective date of the regulations issued under subsection (i) of that section *if that information was submitted after the date of enactment of this Act.*” (emphasis added). The Agency tentatively construes this language as excluding information that was submitted to the Agency prior to December 5, 2015, from the definition of “original information” and has included such exclusion in proposed rule § 513.2(b) for the purposes of clarity.⁶⁰ To give meaning to the phrase “submitted after the date of enactment of this Act,” it appears that a whistleblower award is not permitted for information submitted prior to that date.⁶¹

The Agency notes that this proposed approach is similar to that taken by the SEC and affirmed by the Second Circuit. In *Stryker v. Securities and Exchange Commission*, 780 F.3d 163 (2d. Cir 2015), the petitioner sought review of an SEC order denying his claim for a whistleblower award. In this case, the petitioner provided information that the SEC relied upon in a successful enforcement action, but the claim was denied because the information was submitted before the enactment of Dodd-Frank. The Court noted that the SEC had adopted a rule that provided that whistleblower awards may be made only for information provided to the Commission for the first time after July 21, 2010, and that the “sole basis for petitioner’s claim is section 21F, which was not enacted until after he took the actions that are the grounds for the

⁶⁰ However, the statute is clear that a whistleblower may receive an award regardless of whether the violation underlying the covered action occurred prior to the Act’s date of enactment. Thus, if a whistleblower has submitted original information after December 5, 2015, about a violation that occurred on or prior to December 5, 2015, the whistleblower may be eligible for an award, assuming that all other conditions are met. These timing provisions are consistent with the purpose of the Whistleblower Act of incentivizing whistleblowers to bring information to the Agency.

⁶¹ This interpretation is consistent with language contained in Senate Report 114-3. See S. Rep. 114-13, Motor Vehicle Safety Whistleblower Act, Report of the Committee on Commerce, Science, and Transportation at 7 (2015) (“Nevertheless, since this section limits the application of the [Whistleblower] Act to information submitted after the date of enactment, the Secretary may not issue an award under this Act for information previously submitted or for penalties already assessed prior to the date of enactment.”).

award sought. If the purpose of Dodd-Frank was to encourage whistleblower activity, already completed actions would arguably not qualify.” *Id.* at 166. The Court held, “We need not, however, decide if Congress clearly intended to bar a whistleblower award to petitioner at *Chevron* Step 1 because even if Dodd-Frank is ambiguous, we defer to the SEC’s interpretation of Dodd-Frank at Step 2.” *Id.* It is the Agency’s tentative position that it should follow the SEC’s practice and not permit whistleblower awards for provision of information that predated the Whistleblower Act.⁶²

1. *Proposed Rule § 513.2(b), Original Information that Leads to a Successful Resolution*

Under section 30172(b), a whistleblower’s eligibility for an award depends in part on whether the whistleblower’s original information “leads to” the successful resolution of a covered action. Proposed rule § 513.2(b) defines two situations when the Agency will consider the potential whistleblower to have provided original information that “leads to” a successful resolution.

Some of NHTSA’s proposal is based on the approach taken by the SEC and the CFTC in their whistleblower regulations.⁶³ The first situation in which the Agency will consider the potential whistleblower to have provided original information that “leads to” a successful resolution is when the potential whistleblower gave the Agency original information that was sufficiently specific, credible and timely to cause the Agency to open an investigation, reopen an investigation that the Agency had closed, continue an investigation the Agency would not have

⁶² See also *Ross v. Securities and Exchange Comm’n*, 34 F.4th 1114, 1122 (D.C. Cir. 2022) (interpreting the provision in 15 U.S.C. 78u-7(b) stating that “Information provided to the Commission in writing by a whistleblower shall not lose the status of original information (as defined in section 78u-6(a)(3) of this title, as added by this subtitle) solely because the whistleblower provided the information prior to the effective date of the regulations, *if the information is provided by the whistleblower after July 21, 2010*” as specifically requiring exclusion of this category of submissions from being considered “original information” such that the Court could conclude that under “*Chevron* Step 1 that the Congress has indeed spoken directly and unambiguously to the precise question at issue and the SEC followed this directive to the letter.”).

⁶³ See 17 CFR 240.2F-4(c) and 17 CFR 165.2(i).

continued but for the information, or to inquire concerning a different potential violation of 49 U.S.C. chapter 301 or a regulation thereunder as part of a current investigation, and the U.S. Department of Transportation, Agency or the Department of Justice brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of the potential whistleblower's original information.

The second situation that the Agency will consider the potential whistleblower to have provided information that "leads to" a successful resolution is, under circumstances delineated below, where the potential whistleblower gave the Agency original information about conduct that was already under investigation by the Agency. In these cases, the proposal would find the information to have "led to" the successful resolution of the covered action when the potential whistleblower's information significantly contributed to the success of the covered action and the U.S. Department of Transportation, Agency or U.S. Department of Justice brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of the potential whistleblower's original information.

In evaluating whether the information "significantly contributed" to the success, the Agency anticipates it will proceed on a case-by-case basis to provide flexibility to address all potential scenarios. The Agency may consider such things as whether the information allowed the Agency to bring a successful action in significantly less time or with significantly fewer resources or whether it was able to bring additional successful claims against additional individuals or entities.

m. *Proposed Rule § 513.2(b), Part Supplier*

The statutory definition of "part supplier" means a "manufacturer of motor vehicle equipment." There is a statutory definition of "motor vehicle equipment" found at 49 U.S.C. 30102(a)(8). To avoid confusion, the Agency wants to make it clear that its interpretation covers *all* motor vehicle equipment, regardless of whether it is original equipment or replacement equipment, as those terms are defined in 49 U.S.C. 30102(b)(1)(C) and (D).

n. *Proposed Rule § 513.2(b), Potential whistleblower*

Since there is a specific statutory definition of “whistleblower” that contains a number of prerequisites that need to be met to fall under the definition, the Agency proposes to use the term “potential whistleblower” for the sake of clarity, as the Agency will not be able to determine whether a person is a “whistleblower” until, at the very least, that person submits information to the Agency and it is evaluated. Therefore, the Agency proposes that the term “potential whistleblower” refer to an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership submitting information to the Agency in accordance with and pursuant to this part.

It is important to note that the Agency will treat potential whistleblowers as subject to the protections in 49 U.S.C. 30172(f).

o. *Proposed Rule § 513.2(b), Related Administrative or Judicial Action*

The Agency proposes the term “related administrative or judicial action,” as used in the definition of covered action, to refer to an action that was brought under 49 U.S.C. chapter 301 by the U.S. Department of Justice, the U.S Department of Transportation, or the Agency and is based on the original information provided by the whistleblower. For example, under this interpretation, if the whistleblower’s submission leads to two separate but related enforcement actions, each with a monetary sanction of \$600,000, those two amounts can be added together to overcome the \$1,000,000 threshold for a whistleblower award. The Agency believes that under principals of statutory construction “related actions” are limited to only those actions brought under 49 U.S.C. chapter 301. The term “covered action” is defined in 49 U.S.C. 30172(a)(1) as “any administrative or judicial action, including any related administrative or judicial action, brought by the Secretary or the Attorney General under this chapter that in the aggregate results in monetary sanctions exceeding \$1,000,000.” The Agency believes that the use of the word “including”, and the placement of commas makes it clear that “related” actions are a subset of any administrative or judicial actions brought under 49 U.S.C. chapter 301, rather than referring to actions brought under other statutes. This would mean that deferred prosecution agreements

and the like entered into by the U.S. Department of Justice with companies for violations of criminal laws generally would not be considered a “related” action, as those actions are not brought under 49 U.S.C. chapter 301. Thus, any money collected by the government in connection with that deferred prosecution agreement or the like would not be compensable to a whistleblower under 49 U.S.C. 30172.

As discussed elsewhere in this document, this interpretation also makes the most sense with respect to where the money for a whistleblower award would come from. Unlike the SEC and CFTC, the Agency does not have a separate fund to draw from in making award payments. Rather, the Agency anticipates that the “pot of money” from which to pay the award will come from penalties and additional monetary sanctions the manufacturer or other entity that violated the Safety Act or the regulations thereunder paid to the United States.

The Agency also wants to clarify “related action” as it may pertain to additional actions stemming out of a consent order. For example, several consent orders issued by NHTSA contain clauses for deferred penalties or abeyance amounts. Generally, under these clauses, the company under the consent order stipulates that it will pay a certain monetary amount if there is another violation of the consent order, the Safety Act, or the regulations thereunder by it. These amounts are tied to a yet undetermined violation at the time of the execution of the consent order. It is the Agency’s tentative view that any amounts that come due under a deferred or abeyance amount would not be considered part of the initial civil penalty action that resulted in the consent order, nor would it be considered a “related” action. If a whistleblower received an award in connection with the initial civil penalty action, it is our tentative view that such whistleblower would not be eligible for an award percentage of any amount collected from the deferred/abeyance amounts, unless the whistleblower provided original information that led to the Agency determining the deferred penalty payment was required. We request comments on this interpretation.

If a whistleblower provided information that resulted in a deferred penalty or abeyance amount coming due under a consent order, it is our tentative view that this would be a successful resolution. Any determination letter by NHTSA that a penalty was owed could be considered a “covered action” if the original information provided by the whistleblower led to the collection of more than \$1,000,000 of the deferred penalty or abeyance amounts. It is our tentative view that such whistleblower would be eligible for an award under these circumstances.

In some cases, a performance obligation amount would become due under a consent order if the company did not meet its spending requirements. In that case, the performance obligation amount relates to a fixed expenditure obligation arising out of the initial violation of law that led to the consent order. It is the Agency’s view that if any of the performance obligation amounts come due under the consent order as money paid to the United States, a whistleblower that was eligible to receive an award for that consent order may also be eligible for an award of ten (10) to thirty (30) percent of any performance obligation amount collected by the United States.⁶⁴

p. Proposed Rule § 513.2(b), Secretary

Proposed rule § 513.2(b) clarifies that the term Secretary means the Secretary of Transportation.⁶⁵

q. Proposed Rule § 513.2(b), Successful Resolution

The definition of “successful resolution” in proposed rule § 513.2(b) provides additional clarification of what a successful resolution includes. Under the proposal, a successful resolution, when referring to any administrative or judicial action brought by the Secretary, Agency or the Attorney General relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement

⁶⁴ The Agency also anticipates that if the performance obligation spend requirement is collected under the terms of the consent order, any such amount could be added to the amounts already collected by the United States to reach the over one-million-dollar threshold needed to be a “covered action” for which an award may be paid.

⁶⁵ NHTSA notes that in section 30171, *Protection of employees providing motor vehicle safety information*, the term Secretary generally refers to the Secretary of Labor.

under 49 U.S.C. chapter 301 or regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury, includes any settlement of the action by the U.S. Department of Transportation, the Agency, or the U.S. Department of Justice, or final decision or judgment in whole or in partial favor of the Agency, the U.S. Department of Transportation, or the U.S. Department of Justice.

Under this definition, a successful resolution can include, but is not limited to, a consent order that is issued by the Agency, a decision letter issued by the Agency, a consent decree that is entered by a Court, a settlement agreement, or a judicial order in whole or in part in the Agency's favor.

r. *Proposed Rule § 513.2(b), Whistleblower*

The term "whistleblower" is defined in section 30172(a)(6). The proposed definition tracks the statutory definition of whistleblower, except that the proposed rule uses the term "Agency" and clarifies that "any violation or alleged violation of any notification or reporting requirements of this chapter" refers to 49 U.S.C. chapter 301 and regulations promulgated thereunder for the purposes of clarity.

Proposed rule § 513.2(b) defines "whistleblower" as any employee or contractor of a motor vehicle manufacturer, part supplier, or dealership who voluntarily provides to the Agency original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. chapter 301 or regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury.

Because the statute requires that that a whistleblower provide information to the Secretary and that the submission be voluntary, it is the Agency's tentative view that the whistleblower or the whistleblower's legal representative must be the one to directly provide the information to NHTSA. For example, it is the Agency's tentative view that if a whistleblower provides information to an advocacy group, reporter, or some other third-party and that third-

party provides the information to NHTSA, such a submission would not comport with the requirement to voluntarily provide original information to the Secretary. To the extent the whistleblower is concerned about revealing their identity, the Agency believes that the proposed anonymous submission procedure should help to mitigate the concerns. When a whistleblower provides information directly to the Agency (including through a legal representative), the Agency has the ability to follow-up and obtain additional information or clarification.

The Agency requests comment on whether it should add the word “potential” in front of the term “motor vehicle defect” and “noncompliance” as the terms “safety-related defect” and “noncompliance” are understood to have specific meaning in the context of the recall and remedy portions of the Safety Act,⁶⁶ and the Agency is careful to use those terms only when it is determined that there is an actual safety-related defect or noncompliance with an applicable FMVSS, not just a potential or apparent safety-related defect or noncompliance.

A manufacturer may file a notice of safety-related defect or noncompliance with the FMVSS pursuant to 49 CFR part 573, or the Agency may follow an administrative process to determine that a safety-related defect or noncompliance with an applicable FMVSS exists. In cases where a manufacturer has not determined that there is a safety-related defect or a noncompliance with an applicable FMVSS in a motor vehicle or item of motor vehicle equipment, the Safety Act and regulations thereunder prescribe a process for the Agency to make such a decision. The steps include the Agency making an initial decision, providing to the manufacturer all information on which the decision was based, having a public meeting on the issue, and making a final decision.⁶⁷

The Agency has provided further clarity to the phrase “any violation or alleged violation of any notification or reporting requirements of this chapter” by specifying that the phrase refers to 49 U.S.C. chapter 301 and regulations promulgated thereunder.

⁶⁶ 49 U.S.C. 301118-30120.

⁶⁷ 49 U.S.C. 30118(b), 49 CFR 554.10, 554.11.

The Agency is specifically requesting comment on whether a whistleblower has to provide original information related to the company that employed or contracted with the whistleblower or whether the employee or contractor of any motor vehicle manufacturer, part supplier, or dealership can report original information regarding any motor vehicle manufacturer, part supplier or dealership (not just the one that employed them or that they were contractors of).

One view is that because the statute has an emphasis on internal reporting, that Congress may have intended that only employees and contractors providing information on the motor vehicle manufacturer, part supplier, or dealership that employed them or contracted with them could be whistleblowers. However, the statute also provides that the Secretary may have good cause to waive the internal reporting requirement,⁶⁸ which provides a statutory way to exclude employees or contractors of other corporate entities (such as competitors) from needing to report to be eligible for an award.

The Agency believes that competitors, partners, employees of another separate corporate entity, and the like often have insight into the automotive market and is proposing to allow them to receive whistleblower awards. The Agency specifically requests comment on whether such employees or contractors of other motor vehicle manufacturers, parts suppliers, or dealerships should be considered potential whistleblowers. The Agency has provided examples below for consideration:

1. Employee of Tire Manufacturer A has original information that Tire Manufacturer B has been falsely certifying its tires as compliant with all applicable FMVSS.
2. Employee of Motor Vehicle Manufacturer C has original information that Motor Vehicle Manufacturer D did not report deaths as required by Early Warning Reporting (“EWR”) requirements.
3. Employee of Dealership E has original information that Dealership F has been selling new vehicles that have open recalls.

⁶⁸ 49 U.S.C. 30172(c)(2)(E)(iii).

4. Employee of Motor Vehicle Manufacturer G has original information that Dealership G has been selling new vehicles that have open recalls.
5. Employee of Motor Vehicle Equipment Manufacturer H has original information that Motor Vehicle Manufacturer I did not timely recall vehicles with a safety-related defect.
6. Employee of parent company Motor Vehicle Manufacturer J has information that subsidiary company Motor Vehicle Manufacturer K did not timely recall vehicles with a safety-related defect.
7. An employee of company L that has served as a subcontractor to Registered Importer M is aware that Registered Importer M submitted false or misleading certificates of conformance to NHTSA.

The Agency is aware that employees and contractors in the motor vehicle industry often have knowledge regarding other corporate entities. This often includes companies with a relationship, such as a motor vehicle manufacturer and its dealers, a parts supplier and the companies that purchase its parts, a related corporate entity (for example, a parent and subsidiary) or a partner company. The Agency also believes that competitors often have valuable insight into their competitors' actions in the market. For example, a company that has been undercut on price because its competitor improperly certifies its products as complying with applicable FMVSS certainly may have valuable information for the Agency and may be further incentivized to inform the Agency if a whistleblower award may be possible. In some cases, competitors may conduct "tear downs," or other investigations of a product as part of their normal business practices, which may lead to their conclusion that the competitor's product may contain a safety-related defect or noncompliance with an applicable FMVSS. NHTSA believes that competitor-provided information could be a rich source of data. However, based on the language of the statute, it appears that the company could not make the claim on its own behalf and be considered a "whistleblower." It does appear that an employee or contractor of the

competitor company could make the report and still qualify under the statutory definition of “whistleblower.” The Agency requests comment on this interpretation.

The Agency is also requesting comment on whether employees of motor vehicle industry related trade groups could be considered whistleblowers. The Agency’s tentative conclusion is that while trade groups themselves cannot be whistleblowers, the employees or contractors with the companies within the trade group’s membership can be whistleblowers, provided they fall into the definition of motor vehicle manufacturer, part supplier, or dealership. This best effectuates the purpose of the statute in incentivizing those with access to information on safety issues and violations of law to bring them to the Agency’s attention.

The Agency does have some concerns that some unscrupulous actors may anonymously or improperly provide information to the Agency not because they think there is a safety-problem, but rather with the motive to harm the competitor or entity by making false or inaccurate allegations. However, this concern may be mitigated by 49 U.S.C. 30172(g) and proposed rule § 513.8.

Under 49 U.S.C. 30172(c)(2)(E)(iii), the Secretary may, for good cause, waive the requirement to report or attempt to report the information through the internal reporting mechanism. This authority has been delegated to NHTSA. The Agency anticipates making such decisions on a case-by-case basis. However, NHTSA is requesting comment on whether it should consider an interpretation or rule that claims made by employees or contractors of other motor vehicle manufacturers, part suppliers, or dealerships as automatically exempt for good cause from the requirements to report it to the internal reporting mechanism of the motor vehicle manufacturer, part supplier, or dealership about which the whistleblower is providing information or other internal reporting.⁶⁹

⁶⁹ The Agency does not think it makes sense to require such employee or contractor to make a report to the internal reporting mechanism of its motor vehicle manufacturer, part supplier, or dealership in those situations where the conduct involved is unrelated to the actions of its employing or contracting entity. The Agency therefore would not require this type of internal reporting should the rule allow for whistleblowers to receive awards for reporting conduct of entities that did not employ or contract with them, as is proposed.

C. Proposed Rule § 513.3 - Representation

Proposed rule § 513.3 tracks the language of 49 U.S.C. 30172(d), which provides that a whistleblower may be represented by counsel, and also adds the term “potential whistleblower” for clarity.

D. Proposed Rule § 513.4 - Procedures for Submitting Original Information

The Agency proposes that the potential whistleblower submit information on a standardized form, WB-INFO. A proposed draft of the WB-INFO form is contained in Appendix A to this proposed rule.

In addition to other benefits, the use of a standardized form (WB-INFO) will assist the Agency in managing and tracking the whistleblower information it receives. This will also better enable the Agency to connect whistleblower information to requests for award payment under the whistleblower provisions.

Proposed rule § 513.4(a) proposes that the standard form must be submitted either by email to NHTSA’s established account (NHTSAWhistleblower@dot.gov), which is monitored by the Office of the Chief Counsel, or by any such method that the Agency may expressly designate on its website.

Proposed rule § 513.4(b) would provide that the potential whistleblower must declare under penalty of perjury at the time the potential whistleblower submits information on the WB-INFO form that the information is true and correct to the best of the potential whistleblower’s knowledge and belief. The purpose of requiring a sworn declaration on the WB-INFO form is to help deter the submission of false and misleading information, which undermines the efficient use of the Agency’s resources. The requirement may also mitigate the potential harm to companies and individuals that may be caused by false or spurious allegations of wrongdoing.

Proposed rule § 513.4(c) would provide that a potential whistleblower may provide original information to the Agency anonymously through use of a legal representative. The legal representative must submit the information on behalf of the potential whistleblower pursuant to

the procedures specified in § 513.4(a). Prior to the legal representative's submission, the potential whistleblower must provide his or her legal representative with a completed WB-INFO form that he or she has signed under the penalty of perjury. When the legal representative makes the submission on behalf of the potential whistleblower, the legal representative must certify that he or she: (1) has verified the potential whistleblower's identity; (2) has verified that the potential whistleblower is an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership; (3) has reviewed the potential whistleblower's signed WB-INFO form for accuracy and that the information contained therein is true and correct to the best of the legal representative's knowledge, information and belief; and (4) has obtained the potential whistleblower's non-waivable consent to provide the Agency with the original WB-INFO form from the potential whistleblower in the event that the Agency requests it.

The Agency requests comments on whether it should allow non-attorneys to submit information on behalf of a potential whistleblower.

Because many potential whistleblowers may wish to provide information anonymously, the Agency believes the proposed rule strikes an appropriate balance between the Agency's interest in deterring false and misleading information while permitting anonymous submissions with certain specified conditions. Anonymous potential whistleblowers will have the same rights and responsibilities as other potential whistleblowers unless expressly exempted. This includes the restrictions on providing false information, as addressed in proposed rule § 513.8.

Finally, proposed rule § 513.4(d) follows section 24352(b) of the FAST Act by providing that if a potential whistleblower submitted original information to the Agency after December 4, 2015 (the date of the enactment of the FAST Act) but before the effective date of these rules, the submission will be deemed to satisfy the requirements set forth in § 513.5(a) and (b).

E. Proposed Rule § 513.5 - Confidentiality

49 U.S.C. 30172(f) provides for protection of whistleblowers. Consistent with this section, proposed rule § 513.5(a) explains that notwithstanding 49 U.S.C. 30167, the Secretary

and any officer or employee of the U.S. Department of Transportation shall not disclose any information, including information provided by a whistleblower to the Secretary, that could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of 5 U.S.C. 552a unless it falls under one of the circumstances described in the statute.

It is the Agency's view that if an individual is not a whistleblower, as defined by the statute, the Agency is not bound by the limitations contained in 49 U.S.C. 30172(f). However, it is the Agency's intent to afford potential whistleblowers, that is, those persons who submit information to the Agency in accordance with this part, confidential protections indefinitely, unless otherwise waived or permitted.⁷⁰ NHTSA recognizes that potential whistleblowers often put themselves at risk of significant consequences, and thus maintaining their confidentiality is of the utmost importance.

An important part of maintaining confidentiality of whistleblowers relates to the Agency's ability to communicate directly with whistleblowers. Therefore, the Agency wants to make it clear that the Agency's staff, including its lawyers, may communicate directly with potential whistleblowers, including directors, officers, members, contractors, or employees of any entity that has counsel, without seeking consent of the entity's counsel. 49 U.S.C. 30172 demonstrates a strong Congressional policy to encourage disclosure to the Agency relating to certain safety information while protecting the identity of those who do so. This policy would be significantly impaired if the Agency were required to seek the consent of the entity's counsel before speaking with an individual who contacts it and who is a director, officer, member, contractor, or employee of any entity that has counsel. The Agency believes that, in accordance with American Bar Association Model Rule 4.2, an attorney on behalf of NHTSA is authorized

⁷⁰ For those persons who submit information prior to the effective date of the final rule on this section, it is the Agency's intent to accord them confidential protection, unless otherwise waived or otherwise permitted.

by law to make these communications.⁷¹ Thus, Agency staff (including its attorneys) could meet with the individual privately, without the consent, knowledge or presence of counsel of the entity. The Agency requests comment on whether it should put this position in a rule, similar to that of the 17 CFR 240.21F-17(b).⁷²

As explained in more detail below, the Agency needs to be able to distinguish which information is from a whistleblower or potential whistleblower and which information is from a member of the general public in order to properly follow the whistleblower requirements contained in 49 U.S.C. 30172(f) while not impeding its mission to save lives, prevent injuries and reduce economic costs due to road traffic crashes, through education, research, safety standards and enforcement activity. For example, if the Agency receives a call from a consumer, and that consumer is not an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership, that person is not a whistleblower and is therefore not entitled to the protections under 49 U.S.C. 30172(f).

As another example, even if the individual is an employee or contractor of a motor vehicle manufacturer, if the information they are disclosing relating to a motor vehicle defect, noncompliance, or violation of notification or reporting requirement is not likely to cause unreasonable risk of death or serious physical injury, then that person is not a whistleblower and is not entitled to the statutory protection contained in 49 U.S.C. 30172.

The provisions in proposed § 513.5(a) are based on the statutory provisions at 49 U.S.C. 30172(f)(1)(A)-(C). Paragraph (a)(1) of proposed rule § 513.5 would authorize disclosure of information that could reasonably be expected to reveal the identity of a whistleblower when disclosure is required to a defendant or respondent in connection with a public proceeding

⁷¹ American Bar Association Model Rule 4.2 provides, “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.” See Model Rules of Professional Conduct, R. 4.2, *Communications with Persons Represented by Counsel*, available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_4_2_communication_with_person_represented_by_counsel.html.

⁷² See SEC’s Rule 21F-17(b).

instituted by the Secretary, the Agency or any entity described in proposed rule § 513.5(c), which includes the U.S. Department of Justice and any appropriate department or agency of the Federal Government acting within the scope of its jurisdiction.

Paragraph (a)(2) would authorize disclosure if the whistleblower provides prior written consent for the information to be disclosed. An example of prior written consent would be if the whistleblower gave such consent, such as through the release contained at proposed form WB-RELEASE. Even when a release is signed, the Agency endeavors not to release information that could reasonably be expected to reveal the identity of a whistleblower unless necessary. We believe this practice helps reassure prospective whistleblowers that the Agency takes the protection of whistleblowers seriously.

Paragraph (a)(3) would authorize disclosure when the Secretary or other officer or employee of the U.S. Department of Transportation receives the information through another source, such as during an inspection or investigation under section 30166 and has the authority under other law to release the information.

Proposed rule § 513.5(b) gives effect to 49 U.S.C. 30172(f)(4). It provides that notwithstanding paragraph (a), nothing in this section is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

Proposed rule § 513.5(c) follows 49 U.S.C. 30172(f)(5), but replaces the word Secretary with Administrator, as the Secretary has authorized the NHTSA Administrator to exercise the authority vested in the Secretary under 49 U.S.C. chapter 301. 49 CFR 1.95(a). It provides that notwithstanding paragraph (a) of this section, without the loss of its status as confidential in the hands of the Administrator, all information referred to in paragraph (a) of this section may, in the discretion of the Administrator, when determined by the Administrator to be necessary or appropriate to accomplish the purposes of 49 U.S.C. chapter 301, be made available to the U.S. Department of Justice or an appropriate department or agency of the Federal Government, acting

within the scope of its authority, provided that each entity shall maintain information as confidential in accordance with the requirements of paragraph (a).

49 U.S.C. 30172(f)(2) provides that the Secretary, and any officer or employee of the Department of Transportation, shall take reasonable measures to not reveal the identity of the whistleblower when disclosing any information under 49 U.S.C. 30172(f)(1). Since 49 U.S.C. 30172(f)(2) is entitled “Redaction,” the Agency is proposing to interpret this provision in Proposed 513.5(d) as meaning that the Secretary and any officer or employee of the U.S. Department of Transportation should take reasonable measures not to reveal the whistleblower’s name, and that the whistleblower’s name should be redacted when information is disclosed under proposed rule § 513.5(a). 49 U.S.C. 30172(f)(1).

Because 49 U.S.C. 30172(f)(4) and (5) are excepted from the restrictions in 49 U.S.C. 30172(f)(1) and 49 U.S.C. 30172(f)(5) provides that information may be made available to government agencies without losing its status as confidential, our tentative conclusion is that we are not required to redact the whistleblower’s name when providing information under those subsections. Those provisions allow information to be disclosed to the U.S. Department of Justice or an appropriate department or agency of the Federal Government acting within the scope of its jurisdiction. It seems incongruous to provide information to the U.S. Department of Justice in support of an investigation, but not be able to provide the Department with the name of the whistleblower, the source of such information. The Agency anticipates that the U.S. Department of Justice would want to speak with the whistleblower to assess the whistleblower’s credibility or get further information in support of its investigation or analysis.

Proposed 513.5(e) gives effect to 49 U.S.C. 30172(f)(3). It provides that the identity of the whistleblower and the information provided to the Secretary by the whistleblower shall be considered exempt from disclosure under the provisions of 5 U.S.C 552 to the fullest extent permitted by law.

Proposed 513.5(f) states that the person should identify himself or herself as a whistleblower at the time he or she first submits original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements under 49 U.S.C. chapter 301 by submitting a WB-INFO form. If the person is represented by a legal representative, that legal representative should identify his or her client as a whistleblower at the time the legal representative first submits original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements under 49 U.S.C. chapter 301 on behalf of the legal representative's client in the WB-INFO form.

The Agency specifically requests comment on whether this identification should be mandatory at the outset or be permissive given that certain whistleblowers or their legal representatives may simply be unaware of the WB-INFO form before contacting the Agency, may first reach out with questions before submitting a WB-INFO form, or otherwise may have good cause for not immediately submitting a WB-INFO form.

The reason for this proposed requirement is programmatic. Unlike other entities that have a policy and practice to treat all information obtained during an investigation as confidential and nonpublic,⁷³ NHTSA generally makes information on safety-related defect investigations for which it has not received a request for confidential treatment under 49 CFR part 512 publicly available. The Agency posts materials such as Information Requests, Special Orders, and answers thereto on its website, www.nhtsa.gov.

NHTSA also makes various consumer complaints publicly available, with Personally Identifiable Information (PII) redacted. NHTSA receives consumer complaints through a variety of sources, including calls to its vehicle safety hotline, which are transcribed, and submissions of Vehicle Owner Questionnaires (VOQs) through its website, www.nhtsa.gov.

⁷³The SEC and CFTC both have this practice. See, e.g., *Final Rule, Securities Whistleblower Incentives and Protections*, 76 FR 34300, 34332 (June 13, 2011); *Final Rule, Whistleblower Incentives and Protection*, 76 FR 53172, 53184 (Aug. 25, 2011).

NHTSA relies on information submitted by consumers to assist it in identifying potential safety issues. For example, in opening an investigation into a safety-related defect, NHTSA describes the issue being investigated in an “Opening Resume,” which includes a failure report summary. Applicable VOQs are identified in the failure report summary under the heading “ODI Complaints.” The Opening Resume may include a reference to the identification number(s) of the counted VOQs. NHTSA often discusses the VOQs with manufacturers when it is conducting an investigation.

NHTSA also receives information on potential safety issues through letters, emails, and phone calls. NHTSA may open an investigation based on information provided through any of these sources.

Because NHTSA currently has no required method or form of submission of information by whistleblowers since rules implementing the whistleblower program have not yet been enacted, NHTSA has taken a broad view of what is considered whistleblower information. This information comes from a variety of sources, such as VOQs, and information provided by telephone, letter, or email to the Agency. We have taken this broad view not only to review and track the information submitted, but also to better protect the confidentiality of those who have provided whistleblower information to the Agency. As NHTSA has received information from over 150 potential whistleblowers since enactment of the FAST Act, and as more whistleblowers are expected to come forward, the Agency needs a robust way to identify potential whistleblowers to afford them the protection available in 49 U.S.C. 30172.

Because 49 U.S.C. 30172 requires the U.S. Department of Transportation to afford confidential treatment to information “which could reasonably be expected to reveal the identity of a whistleblower” “[n]otwithstanding section 30167”⁷⁴ it is important to be able to determine whether a person is a “whistleblower” at the time he or she submits information to the Agency. When a person submits a VOQ or other complaint to NHTSA, it may not be clear at that point

⁷⁴ 49 U.S.C. 30167 relates to disclosure of information by the Secretary of Transportation.

whether the person submitting the information would meet the definition of a “whistleblower.”

Therefore, to balance the interest of transparency against the whistleblower protection afforded by the statute, the Agency proposes that the person should identify himself or herself as a whistleblower at the time he or she first submits original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements under 49 U.S.C. chapter 301 or a regulation thereunder. Proposed rule § 513.5(f) also requires that if a person is represented by a legal representative, the person’s legal representative should identify the client as a whistleblower at the time the legal representative first submits original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements under 49 U.S.C. chapter 301 or regulation thereunder on behalf of the legal representative’s client.

The most effective and obvious way for whistleblowers to identify themselves to the Agency is for the whistleblower to submit his or her original information on a WB-INFO form. It also may be more beneficial to the whistleblower to submit the information on the WB-INFO form, as failure to do so could make the whistleblower ineligible for an award under proposed rule § 513.6(b). Therefore, the Agency is requesting comment on whether a person must identify themselves as a whistleblower through use of the WB-INFO form. The Agency specifically requests comment on this issue, given the potential impact on whistleblowers that may not be familiar with NHTSA’s regulations, but nevertheless could readily be identified as a whistleblower. However, the Agency notes its intention to protect all potential whistleblowers, to the extent they can be identified, regardless of whether they file a WB-INFO form.

Section 30172(f) prohibits disclosure of “any information, including information provided by a whistleblower to the Secretary, which could reasonably be expected to reveal the identity of the whistleblower” except in certain situations. The Agency is requesting comments on whether it should define “any information...which could reasonably be expected to reveal the

identity of a whistleblower,” and if so, what the proposed definition should be.

The Agency recognizes that its investigative function may be thwarted if it is not able to follow all lines of inquiry, but a very broad view of “any information...which could reasonably be expected to reveal the identity of a whistleblower,” could do just that by restricting the Agency’s ability to conduct follow-up inquiry. For example, if a whistleblower reveals information known only to a small group within a company, the Agency’s attempts to verify that information or obtain related information could lead the company to suspect a particular individual has been in communication with the Agency. Other than asking the whistleblower to sign a consent form for disclosure of information in these cases, NHTSA is requesting comments on how the Agency can most effectively investigate whistleblower allegations while abiding by the statutory requirements of 49 U.S.C. 30172(f). NHTSA notes that it believes it has been able to effectively balance these competing interests in the several years since the FAST Act’s enactment, through careful lines of inquiry, by engaging in investigatory activity without revealing the identity of the whistleblower. However, we are also interested in input from stakeholders on this issue.

NHTSA recognizes that there may be a tension between the statutory requirement to deny awards to whistleblowers who fail to report or attempt to report information through an internal reporting mechanism unless an exception applies (49 U.S.C. 30172(c)(2)(E)) and the mandate of 49 U.S.C. 30172(f) for NHTSA to protect any information that could reasonably be expected to reveal the identity of a whistleblower.

In a hypothetical situation, a whistleblower would report the issue to the company through the internal reporting mechanism, and therefore the whistleblower’s identity may become known to the company. Even if a company had a process to allow for anonymous reports, a company may be able to glean a whistleblower’s identity from the facts and circumstances surrounding the whistleblower’s report. If NHTSA were to send an inquiry to the company, even in a general way, about the information provided to it by the whistleblower, the

company might be able to discern that the whistleblower also reported the issue to NHTSA. NHTSA would run the risk of violating section 30172(f)(1) if such inquiry was deemed a “disclosure” of information that could reasonably be expected to reveal the identity of a whistleblower. NHTSA does not view such a scenario as a “disclosure” of information.

Additionally, 49 U.S.C. 30171 put in place protections for employees of motor vehicle manufacturers, part suppliers, and dealerships to protect the employees from discrimination or discharge for, among other things, providing to the employer or the Secretary information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. chapter 301. Such employee may file a complaint with the Secretary of Labor alleging such discharge or discrimination. The Secretary of Labor is required to notify in writing the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person. 49 U.S.C. 30171(b). The regulations addressing the procedures under this statute can be found at 29 CFR part 1988.⁷⁵ Therefore, under an action brought under 49 U.S.C. 30171, the company should already be aware of the employee’s identity. If that employee provided information to NHTSA and NHTSA discussed even generally the basis of the allegations with such company, the company may be able to discern the potential whistleblower’s identity. Again, NHTSA does not view such a scenario as a “disclosure” of information.

There may be times where, despite receiving information from a potential whistleblower, the Agency will still need data or information from the manufacturer, part supplier, dealership or other entity in order to properly evaluate whether there is a motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. chapter 301 or a regulation thereunder, which is likely to cause unreasonable risk of death or

⁷⁵ More information about the U.S. Department of Labor’s whistleblower protection program can be found at <https://www.whistleblowers.gov>.

serious physical injury. As illustrated by the above examples, taking a broad view of “shall not disclose any information which could reasonably be expected to reveal the identity of a whistleblower” might impede NHTSA from following up on certain safety information, unless it was able to secure written consent from the whistleblower. We do not believe this is the intended result of the statute. The Agency requests comments on how to effectively investigate whistleblower allegations while abiding by the statutory requirements of 49 U.S.C. 30172(f).

F. Proposed Rule § 513.6 - Prerequisites to the Consideration of an Award

Proposed rule § 513.6 summarizes the general prerequisites for persons to be considered for the payment of an award, based on the statutory language of 49 U.S.C. 30172(b)(1) and the definition of a whistleblower under 49 U.S.C. 30172(a)(6), but adds the word “potential” in front of the terms “motor vehicle defect” and “noncompliance.” Under proposed rule § 513.6(a), subject to the eligibility requirements in these rules, NHTSA may, but is not required to, authorize payment of an award to one or more persons who provide a voluntary submission to the Agency that contains original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. chapter 301 or a regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury, and the original information in that submission leads to the successful resolution of a covered action.

Paragraph (b) of proposed rule § 513.6 proposes that, to be eligible, the person must have given the Agency original information in the form and manner required by proposed rule § 513.4. The proposed rule also provides that the Agency may waive this requirement for good cause shown. The Agency specifically requests comment on this issue, given the potential impact on whistleblowers that may not be familiar with NHTSA’s regulations, but nevertheless could readily be identified as a whistleblower.

For those persons who have submitted original information prior to the effective date of a final rule, proposed rule § 513.4(d) would allow those persons to be eligible for an award

because it could deem their submission to satisfy the requirements in proposed rule § 513.4(a) and (b).

The Agency requests comment on whether there should be any other prerequisites to the consideration of an award.

G. Proposed Rule § 513.7 - Whistleblowers Ineligible for an Award

Proposed rule § 513.7 recites the categories of individuals who are ineligible for an award. The Agency's proposal is based on statutory construction as well as the statutory provisions contained in 49 U.S.C. 30172(c)(2) and (g).

As reflected in proposed rule § 513.7(a), the Agency proposes to construe the statute to mean that if the amount of monetary sanctions collected in a covered action does not exceed \$1,000,000, the whistleblower is ineligible for an award. As an example, if the whistleblower provides original information about a violation that has resulted in a civil penalty of \$600,000, even if the maximum civil penalty that could have been asserted exceeded \$1,000,000, the whistleblower would not be eligible for an award under the statute. We believe this is most in line with the award provision at 49 U.S.C. 30172(b) that says the Secretary may pay an award to a whistleblower "if the original information that a whistleblower provided to the Secretary *leads to* successful resolution of a covered action." (emphasis added). This interpretation is also in line with the statutory definition of "covered action," which includes a reference to "in the aggregate results in monetary sanctions exceeding \$1,000,000" and "monetary sanctions," which is defined as "monies, including penalties and interest, ordered or agreed to be paid."

Another proposed exclusion for whistleblower award eligibility in proposed rule § 513.7 includes any whistleblower who is convicted of a criminal violation related to the covered action for which the whistleblower otherwise could receive an award under this part. Information regarding such convictions is required in the proposed WB-AWARD form. The Agency is also proposing to require in its WB-AWARD form information about whether the whistleblower is currently a subject or target of a criminal investigation in connection with the allegations or

conduct the whistleblower submitted to NHTSA. While the Agency understands that a whistleblower may not know if there is an investigation opened into their conduct, it would be beneficial to the Agency to be provided with information that they are aware of. The Agency requests comment on whether it needs to wait to issue a whistleblower award in such situations until the investigation is closed or criminal case otherwise adjudicated.

The Agency also requests comment on whether it should limit the criminal conviction bar to only those cases decided by a U.S. Federal or State court or whether it should consider convictions issued by courts in other countries.

Other proposed exclusions include any whistleblower who, acting without direction from an applicable motor vehicle manufacturer, part supplier, or dealership, or agent thereof, deliberately causes or substantially contributes to the alleged violation of a requirement of 49 U.S.C. chapter 301 or regulation thereunder; any whistleblower who submits information to the Agency that is based on the facts underlying the covered action submitted previously by another whistleblower; any whistleblower who fails to provide the original information to the Agency in the form required by Section 513.4, absent good cause; or any whistleblower who knowingly and intentionally makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.

Additionally, if the applicable motor vehicle manufacturer, parts supplier, or dealership has an internal reporting mechanism in place to protect employees from retaliation, proposed rule § 513.7 provides that no award shall be made to any whistleblower who fails to report or attempt to report the information through such mechanism, unless the whistleblower reasonably believed that such an internal report would have resulted in retaliation, notwithstanding 49 U.S.C. 30171(a), the whistleblower reasonably believed that the information was already internally reported, was already subject to or part of an internal inquiry or investigation; or was otherwise already known to the motor vehicle manufacturer, part supplier, or dealership; or the Agency has

good cause to waive this requirement, as discussed in additional detail above.

H. Proposed Rule § 513.8 - Provision of False Information

Proposed rule § 513.8 tracks the language of 49 U.S.C. 30172(g), which states that a person who knowingly and intentionally makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under 18 U.S.C. 1001

I. Proposed Rule § 513.9 - Procedures for Making a Claim for a Whistleblower Award

Proposed rule § 513.9 describes the steps a whistleblower is required to follow in order to make an application for an award. The proposed process would begin with the Agency posting a “Notice of Covered Action” (Notice). The Agency proposes that it publish this Notice on the Agency’s website whenever any administrative or judicial action, including any related administrative or judicial action, brought by the U.S. Department of Transportation, Agency, or U.S. Department of Justice under 49 U.S.C. chapter 301 in the aggregate results in collected monetary sanctions exceeding \$1,000,000. Such Notice will be published subsequent to a final judgment, order, or agreement that alone, or in the aggregate, results in collected monetary sanctions exceeding \$1,000,000.

While the Agency typically posts consent orders or settlement agreements over \$1,000,000 to its website shortly after the agreement has been executed, the Agency is not proposing that this be the “Notice.” Rather the Agency is planning on posting the Notice, titled “Notice of Covered Action” once an amount over \$1,000,000 has been collected. In some instances, the Agency has allowed a manufacturer to pay civil penalties in installments over time, or may require the payment of deferred penalties under certain circumstances. Posting the Notice after the money is collected would ensure that there would be a pot of money from which to pay the whistleblower claim. In the event that a deferred civil penalty becomes due, which results in additional collected monetary sanctions exceeding \$1,000,000, the Agency plans on

posting another Notice on its website. In that case, the deferred penalties may come due as a result of a violation related to information provided by a whistleblower unconnected with the initial enforcement action. Prospective claimants should monitor the Agency's website for such Notices. In addition, the Agency will endeavor to notify a whistleblower of a Notice applicable to information provided by that whistleblower.

The Agency proposes that a claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim, including any attachments, for an award based on that action, or the claim will be barred. The Agency requests comment on whether this is sufficient time and requests comment on what other time frames for submission would be appropriate.

The Agency proposes that the claim is deemed filed on the date that it is received by the Agency. If the claim is not received by the Agency on or before the ninetieth calendar day from the date the Notice of Covered Action is posted, the claim will be barred. The Agency requests comment on whether there should be exceptions to the proposed bar. The Agency believes imposing a deadline to file claims is appropriate. NHTSA requires certainty regarding the claims it needs to evaluate in order to stay within the statutory requirements of the award program. The program allows one or more whistleblowers to receive an award relating to the same covered action. Since these whistleblowers would be required to share the "pot" of money in accordance with the range specified by statute, the Agency needs to know all the potential claimants before it can make award determinations.

Paragraph (b) of proposed rule § 513.9 describes the procedure for making a claim for an award. Specifically, a claimant would be required to submit a WB-AWARD form. The whistleblower must sign this form as the claimant and submit it to the Agency by email to NHTSA's Office of the Chief Counsel at NHTSAWhistleblower@dot.gov, or by other such means as the Agency may expressly designate on its website.

Paragraph (b) further emphasizes that all claim forms, including any attachments, must be received by the Agency no later than ninety (90) calendar days from the date of the Notice of

Covered Action to be considered for an award. The Agency interprets the date of the Notice of Covered Action to be the date that the Notice is posted on the Agency's website, which the Agency will identify in the Notice, along with the submission deadline.

Paragraph (c) includes award application procedures for a claimant who submitted original information anonymously. Claimants who had previously submitted information anonymously, but who are now making a claim for a whistleblower award, are required to disclose their identities on the WB-AWARD form. The claimant's identity must be verified in a form and manner that is acceptable to the Agency prior to the payment of any award to such claimant. One reason for not permitting anonymous claimants is that requiring identification would help the Agency ensure that the claimant meets the award eligibility requirements.

Nothing in this proposal is intended to prevent claimants from making a claim for a whistleblower award prior to the effective date of any final rule on this section. Therefore, the Agency has proposed rule § 513.9(d) to provide that if a claimant filed a claim for a whistleblower award after December 4, 2015 (the date of the enactment of the FAST Act) but before the effective date of these rules, the claim submission will be deemed to meet the requirements of § 513.9. However, the Agency will only post a Notice of Covered Action for covered actions that arise after the effective date of the rule.

The Agency also examined whether foreign nationals could be eligible for a whistleblower award. It is the Agency's view that 49 U.S.C. 30172 is not unlawfully extraterritorial and that it is authorized to provide whistleblower awards and protection of identity for foreign national whistleblowers.

In the Agency's view, the purpose underlying the statutory award program is to incentivize employees and contractors of motor vehicle manufacturers, parts suppliers and dealerships to provide information about defects, noncompliances and motor vehicle safety reporting violations to improve automobile safety and to protect the confidentiality of the whistleblowers, when appropriate. This is evident through the text and plain meaning of the

statute. The automotive industry is a global industry, and we believe that the intent of the Whistleblower Act is to help prevent deaths and serious bodily injury on U.S. roadways as a result of defects, noncompliances or violations of notification or reporting requirement of 49 U.S.C. chapter 301 regardless of whether the whistleblower is a U.S. citizen, legal permanent resident or foreign national.

Furthermore, the legislative history indicates that the statute was, at least in part, modeled after the SEC whistleblower award statute.⁷⁶ The Agency notes that in 2014, the SEC awarded a whistleblower payment to a foreign resident, and described why the foreign resident was eligible for an award “notwithstanding the existence of certain extraterritorial aspects of Claimant’s application.”⁷⁷ The SEC stated that in its view, “there is a sufficient U.S. territorial nexus whenever a claimant’s information leads to the successful enforcement of a covered action brought in the United States, concerning violations of the U.S. securities laws, by the Commission, the U.S. regulatory agency with enforcement authority for such violations.”⁷⁸

The SEC has discussed the global scope of its whistleblower program.⁷⁹ The Commission has continued to make awards to foreign nationals, including to those whistleblowers living or residing outside of the United States.⁸⁰ The Agency also notes that the CFTC has granted awards to whistleblowers located outside the United States.⁸¹

⁷⁶ *Commerce Committee Approves Bipartisan Motor Vehicle Safety Whistleblower Act*, Feb. 26, 2015, available at <http://www.thune.senate.gov/public/index.cfm/2015/2/commerce-committee-approves-bipartisan-motor-vehicle-safety-whistleblower-act?>.

⁷⁷ *Order Determining Whistleblower Award Claim, Whistleblower Award Proceeding*, File No 2014-10, available at <https://www.sec.gov/rules/other/2014/34-73174.pdf>.

⁷⁸ *Id.*

⁷⁹ U.S. Securities and Exchange Commission, 2021 Annual Report to Congress, p. 31 available at https://www.sec.gov/files/2021_OW_AR_508.pdf (“In FY 2021 alone, the Commission received whistleblower submissions from individuals in 99 foreign countries.”).

⁸⁰ U.S. Securities and Exchange Commission, 2015 Annual Report to Congress on the Dodd-Frank Whistleblower Program, p. 12, available at <https://www.sec.gov/files/owb-annual-report-2015.pdf>. See also U.S. Securities and Exchange Commission, 2020 Annual Report to Congress, p. 25, available at https://www.sec.gov/files/2020%20Annual%20Report_0.pdf (stating “Past whistleblower award recipients hail from several different parts of the United States, and 19 recipients were foreign nationals or residents of foreign countries at the time they submitted their tips to the Commission.”).

⁸¹ Commodity Futures Trading Commission, Whistleblower Program and Customer Education Initiatives, 2020 Annual Report, p. 2 (Oct. 2020), available at <https://whistleblower.gov/sites/whistleblower/files/2020-11/FY20%20Report%20to%20Congress.pdf>. See also CFTC Announces First Whistleblower Award to a Foreign Whistleblower, July 16, 2018, available at <https://www.cftc.gov/PressRoom/PressReleases/7755-18>.

It appears that in the experience of the SEC, information from individuals outside the United States could be a rich source. The SEC stated, “Since the beginning of the whistleblower program, the Commission has received whistleblower tips from individuals in approximately 130 countries outside the United States.” The Agency anticipates receiving submissions from foreign nationals and that such submissions may be valuable to protecting automobile safety of the American motoring public, given the global nature of the automotive industry. In fact, NHTSA has recognized the importance of information provided by whistleblowers from non-U.S. companies by granting a whistleblower award to an employee of a motor vehicle manufacturer in a foreign country.⁸²

With respect to the global nature of the automotive industry, in calendar year (CY) 2019, there were approximately 7.8 million motor vehicle equipment items and motor vehicles declared in the Customs and Border Patrol (CBP) Automated Commercial Environment (ACE) database. ACE “is the system through which the trade community reports imports and exports and the government determines admissibility.”⁸³ Furthermore, Congress was well aware of the many foreign manufacturers and suppliers that provide motor vehicles and items of motor vehicle equipment for the U.S. market. In fact, the situation with exploding Takata air bags, which were manufactured by a Japanese supplier, was a major motivation for Section 30172.⁸⁴

J. Proposed Rule § 513.10- Award Determinations

Proposed rule § 513.10 describes the award determination process. Under the proposed process described in proposed rule § 513.10(a), once the time for filing any appeals of the covered action (and all related actions) has expired, or where an appeal has been filed, after all appeals in the covered action and related actions have concluded, and over \$1,000,000 in monetary sanctions have been collected, the Agency will evaluate all timely whistleblower

⁸² https://www.nhtsa.gov/sites/nhtsa.gov/files/2022-02/whistleblower-decision-letter-RQ17-003-Kia-RQ17-004-Hyundai_web.pdf.

⁸³ <https://www.cbp.gov/trade/automated>.

⁸⁴ See, e.g., *Thune Opening Statement at Commerce Hearing on Takata Air Bag Defects*, available at <https://www.commerce.senate.gov/public/index.cfm/2014/11/thune-opening-statement-at-commerce-hearing-on-takata-air-bag-defects>.

award claims submitted on a WB-AWARD form in accordance with the criteria set forth in this part. In connection with this process, the Agency may require the claimant to provide additional information relating to the claimant's eligibility for an award or satisfaction of any of the conditions for an award, as set forth in part 513.

Proposed rule § 513.10(b) implements 49 U.S.C. 30172(c), as delegated to the NHTSA Administrator.⁸⁵ It provides that the determination of whether, to whom, or in what amount to make an award shall be in the discretion of the Administrator. We request comment regarding whether the Agency should limit its discretion and, if so, in what way.

We understand the question of the Agency's discretion to be of high interest to stakeholders. While we are cognizant that the Agency's ability to exercise discretion to not grant an award to an otherwise eligible whistleblower could deter some potential whistleblowers, we tentatively believe that retaining this discretion could be important in rare and unusual circumstances. For example, it could be contrary to the public interest for NHTSA to issue a whistleblower award to an employee of a company that blows the whistle on violations of law by a competitor company if that employee is engaged in similar violations of law at his or her own employer. In that case, the disqualifier in 49 U.S.C. 30172(c)(2)(B) would not directly apply (as the "alleged violation of a requirement of this chapter" concerns the competitor). Likewise, it could be contrary to the public interest for NHTSA to award money to a whistleblower that commits a crime involving the Federal government (for example, threatening to assassinate the President), though that is not a disqualifying crime under 49 U.S.C. 30172(c)(2)(A) (since it is not "related to the covered action"). We emphasize that we would not expect to utilize the discretion to not grant an award; however, we tentatively believe that the Agency should retain that authority afforded by Congress. We also note that the Agency's exercise of discretion would not be unbounded and would still be subject to judicial review.

⁸⁵ 49 CFR 1.95(a).

The Agency anticipates that the determination of how much to award, pursuant to proposed rule § 513.10, will involve a highly individualized review of the circumstances regarding each claim. The Agency preliminarily believes that the criteria below afford the Administrator broad discretion to weigh a multitude of considerations in making the determination. Depending on the facts and circumstances of each case, some considerations may not be applicable or may deserve greater weight than others.

Under proposed rule § 513.10(b), in determining whether to grant an award to a whistleblower and the amount of an award, the Administrator shall take into consideration, as appropriate: whether a whistleblower reported or attempted to report the information internally to an applicable motor vehicle manufacturer, part supplier, or dealership; the significance of the original information provided by the whistleblower to the successful resolution of the covered action; the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered action;⁸⁶ the statutory purpose of incentivizing whistleblowers; and the public interest or such additional factors as the Administrator considers relevant.

Proposed rule § 513.10(c) implements 49 U.S.C. 30172(b)(1). It provides that if the Administrator determines that an award is warranted, the Administrator shall determine the amount of such award or awards to one or more whistleblowers. Whistleblower awards shall be in an aggregate amount equal to— (1) not less than 10 percent, in total, of monetary sanctions collected in the covered action; and (2) not more than 30 percent, in total, of monetary sanctions collected in the covered action.

As an example, if the Agency has collected \$100 million in civil penalties in a covered action, and the Administrator decides that a whistleblower award is warranted, the total award money that can be paid out to whistleblowers with respect to that covered action will have a

⁸⁶ The degree of assistance provided by the whistleblower and any legal representative of the whistleblower may include, but is not limited to, providing explanations and other assistance in order that the staff may evaluate and use the information the potential whistleblower submitted and providing an English translation or explanation of the documents, if the original information is not in English, to the extent of the whistleblower's capability.

range of \$10 million (10 percent of \$100 million) to \$30 million (30 percent of \$100 million). If there are two or more whistleblowers that the Administrator has decided should receive an award in connection with that covered action, the total range does not change. The amount awarded to each whistleblower with respect to a covered action will be decided by the Administrator. In the case where there are two or more claimants for an award in connection with a specific covered action, the Agency anticipates that the Administrator will issue a decision on each claim on or around the same date.

As set forth in proposed rule § 513.10(d), following the Administrator's determination, the Agency would send each claimant an Order setting forth whether the claim is allowed or denied, and if allowed, setting forth the award amount. The proposal provides that in no event will the total amount awarded to all whistleblowers in the aggregate be less than 10 percent or greater than 30 percent of the amount of monetary sanctions collected in the covered action.

Other Agencies, such as the SEC⁸⁷ and the CFTC,⁸⁸ post redacted Final Orders with respect to whistleblower award applications. NHTSA also has done so and plans to continue doing so.⁸⁹ We request comment on the extent of the redactions to appropriately balance the interests in whistleblower confidentiality and transparency.⁹⁰

Finally, proposed rule § 513.10(e) follows 49 U.S.C. 30172(e), except that it replaces Secretary with Agency. It provides that no contract with the Agency is necessary for a whistleblower to receive an award.

In making a determination of a whistleblower award, the Agency anticipates reviewing relevant material. This could include the claimant's WB-INFO form, including any attachments

⁸⁷ See Final Orders of the Commission, *available at* <https://www.sec.gov/whistleblower/final-orders-of-the-commission>.

⁸⁸ See Final Orders/Award Determinations, *available at* <https://www.whistleblower.gov/orders/>.

⁸⁹ See Whistleblower Award Decisions, *available at* <https://www.nhtsa.gov/laws-regulations/whistleblower-program>.

⁹⁰ NHTSA notes that other award decisions, such as those of the SEC are largely redacted. NHTSA has reviewed differences between the SEC's and NHTSA's statutory provisions regarding confidentiality. NHTSA's statute, 49 U.S.C. 30172(f)(1)(B) provides that the whistleblower can provide prior written consent for information to be disclosed. Even in cases where there is a prior written waiver, NHTSA anticipates redacting the whistleblower's name consistent with the purpose of 49 U.S.C. 30172(f)(2).

and other related material provided by the potential whistleblower to assist the Agency in its investigation or action; the claimant's WB-AWARD form, including any other filings or submissions from the potential whistleblower in support of the award application; materials from Agency staff, including sworn declarations, regarding any matters relevant to the award determination; any other documents or materials that are received or obtained by the Agency to assist the Agency to resolve the claimant's award application, including information related to the claimant's eligibility; and any other materials that may be relevant to the determination.

The Agency may request that a claimant enter into a confidentiality agreement to review the record. To be clear, the Agency does not intend to provide claimants or their counsel any privileged materials or other material that may not be disclosed by law, such as pre-decisional, attorney-client privilege, attorney work product privilege, or internal deliberative process materials related to the Agency's determination to file or settle the covered action, and/or any other privileged material relating to whether, to whom, and in what amount to make a whistleblower award.

The Agency requests comment on whether it should review information from outside persons, such as the company that was liable for the civil penalties. It is the Agency's tentative view that outside parties should not be able to insert themselves into the award process. In accordance with the confidentiality provisions in the statute, NHTSA does not comment on individual whistleblower matters. Furthermore, to the extent there was a whistleblower in a particular matter, the outside party would not know the degree of assistance that a whistleblower provided. Additionally, if the Agency considers confidential submissions from outside parties, the Agency may be prohibited from sharing the information with the claimant, which seems to undercut fairness if the claimant does not have an opportunity to review and comment on the information provided. Furthermore, the Agency believes the intent of the statute was to incentivize potential whistleblowers to come forward with their information. If the company, or another third party, was allowed to interject in the award proceedings, that may undermine a

whistleblower's willingness to come forward or pursue a claim.

K. Proposed Rule § 513.11 - Appeals of Award Determinations

49 U.S.C. 30172(h)(2) provides appellate rights for any determination made by the Secretary under section 30172 in the appropriate court of appeals of the United States not later than 30 days after the determination is issued by the Secretary. This provision allows a claimant to appeal the Administrator's award eligibility determinations, including the award amount (if any), which are contained in the Agency's Order.

Proposed rule § 513.11(a) follows the statutory language by stating that a claimant may appeal any determination made by the Administrator under § 513.10 to an appropriate court of appeals of the United States not later than 30 days after the Order is issued by the Administrator. Proposed rule § 513.11(a)(1) provides that if no claimant files an appeal within 30 days after the Order is issued by the Administrator, no appeals are permitted with respect to the claim that is the subject of the Order. In the case where there are two or more claimants for an award in connection with a specific covered action, the Agency anticipates that the Administrator will issue his or her decision on each claim at or near the same time, to prevent unnecessary complications.

Proposed rule § 513.11(a)(2) provides that if any claimant appeals within 30 days after the Order is issued by the Administrator, no payments with respect to the covered action will be made to any whistleblower in the action until the appealed award determination action is concluded. This measure is appropriate because the Agency is constrained by the statute as to what percentage of the collected monetary sanctions in a covered action it may award to all whistleblowers. For example, if the applicable United States court of appeals finds that the Agency improperly denied a whistleblower an award, this whistleblower's share in the "pot" of money may affect the amount of money that could be awarded to other whistleblowers who are sharing in that same "pot." Similarly, if the Court of Appeals finds that one whistleblower's share of the "pot" should be increased, that decision has the potential to affect another

whistleblower's share of the same "pot." However, the Agency is also aware that this could deter a whistleblower from exercising legal rights afforded by statute. We request comment on this issue.

The Agency believes that if there is more than one claimant for a covered action, an appeal of an award determination by one may make any other claimant a necessary party to that appeal as, depending on how the appeals court rules, other claimants may have their award amount reduced. However, the Agency is charged with protecting that claimant's identity. The Agency requests comment on how best to resolve this potential issue and other potential issues involving two or more claimants.

Proposed rule § 513.11(b) explicitly provides that these rules do not entitle claimants to obtain from the Agency any privileged materials such as pre-decisional, attorney-client privilege, attorney work product privilege, or internal deliberative process materials related to the Administrator's Order, and/or any privileged material relating to whether, to whom, and in what amount, to make a whistleblower award.

Proposed rule § 513.11(c) makes it clear that the record may contain redactions as necessary, including but not limited to redactions necessary to comply with statutory restrictions, the Agency's enforcement and regulatory functions or regulations, and to comply with requests for confidential treatment from law enforcement, regulatory authorities, or persons submitting information to the Agency pursuant to 49 CFR part 512.

Finally, as specified in 49 U.S.C. 30172(h)(3), proposed rule § 513.11(d) provides that the court shall review the determination made by the Administrator in accordance with the Administrative Procedure Act, 5 U.S.C. 706.

L. Proposed Rule § 513.12 - Procedures applicable to the payment of awards.

Proposed rule § 513.12 details procedures applicable to the payment of awards. Proposed rule § 513.12(a) makes it clear that a recipient of a whistleblower award is entitled to payment on the award only to the extent that a monetary sanction upon which the award is based is collected

in the covered action. The Agency's interpretation is consistent with 49 U.S.C. 30172(b)(1), which refers to paying awards in a range of ten percent to thirty percent of "collected monetary sanctions" and 30172(b)(2), which states that any amount payable under 30172(b)(1) "shall be paid from the monetary sanctions collected, and any monetary sanctions so collected shall be available for such payment."

As discussed above, in prior consent orders, the Agency has allowed for deferred penalties and monetary amounts to be expended in connection with compliance and outreach by the company (*i.e.*, compliance amounts or performance amounts). Under the proposed rule, these compliance amounts would generally not be counted toward monetary sanctions, unless there was an actual payment to the United States under the terms of the consent order or other agreement. The Agency is also of the view that any "deferred" or abeyance amounts should not be counted toward monetary sanctions unless and until they are actually paid and collected.

Proposed rule § 513.12(b) addresses the timing for payment of an award made to a whistleblower. It states that payment of a whistleblower award for a monetary sanction collected in connection with a covered action shall be made within a reasonable time following the later of the date on which the monetary sanction totaling over \$1,000,000 is collected or after completion of the appeals process for all award determinations claims arising from the Administrator's Order relating to the covered action. The Agency requests comment on whether a different time frame for payment is appropriate.

In some instances, the Agency has allowed a manufacturer to pay civil penalties in installments. The Agency is specifically requesting comment on whether the Agency should or must wait until all monetary sanctions are collected, or whether it should provide whistleblowers portions of the award, as the monetary sanctions are collected. For example, if a company agrees to pay a civil penalty of \$3,000,000 in two annual installments of \$1,500,000, a whistleblower who was awarded 10% of the recovery may receive a payment of \$150,000 in the first year, and another payment of \$150,000 in the second year. Alternatively, the Agency could wait until the

entire \$3,000,000 is collected before making the \$300,000 award payment to the whistleblower.

It is the Agency's tentative view that it need not wait until all monetary sanctions are collected to authorize a payment to a whistleblower, but that it must wait until over \$1,000,000 is collected in connection with a covered action before the Agency authorizes any disbursement of awards. The Agency believes that this proposal would balance the Agency's need for efficiency and manageability while providing the whistleblower awardees their award dollars in an expedient manner.

With respect to civil penalties that may become due as a result of collection of deferred penalties or abeyance amounts, the Agency has tentatively concluded that those actions should be treated as new Covered Actions. This means that a whistleblower must follow these regulations to request an award, and that any award will only be authorized for disbursement after the amount collected under the deferred amount or abeyance amount exceeds one million dollars (\$1,000,000).

With respect to the provision relating to completion of the appeals process for all award determination claims arising from the Administrator's Order relating to the covered action, it is intended to address those situations where a single action results in multiple award claims. Under this scenario, if one or more claimants appeals any award determination, including whether an award claim was denied or the amount of the award determination, the Agency would not pay any awards in the action until those appeals have been concluded, because disposition of the appeal could affect other awards in connection with that action. With respect to making payments to whistleblowers, the Agency will follow all applicable Federal laws and regulations.

M. Proposed Appendix A - Form WB-INFO

The Agency proposes to include form WB-INFO in appendix A to part 513. The use of a standardized form will be an efficient way for the Agency to review the whistleblower information it receives and will better allow the Agency to manage and track such information. The Agency requests comment on whether the form WB-INFO should be prescribed by

regulation, whether it would be better to specify the content of the form (and not the form itself), or whether the Agency should take a different approach.

The proposed form WB-INFO and the instructions thereto are designed to capture basic information about a potential whistleblower, the potential whistleblower's legal representative (if applicable), the motor vehicle manufacturer, part supplier or dealership about whom the concern is raised, and the individual's current employer and address, and the potential whistleblower's relationship to the company about whom the concern is raised.

It is designed to elicit sufficient information to determine whether the information is original information and whether the information has been previously provided to NHTSA. It is also designed to elicit whether the information may relate to any potential defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of chapter 301 or a regulation thereunder, and if so, asks the potential whistleblower to provide detailed descriptions related to the allegations and supporting materials. The form is also designed to elicit whether the information was obtained in a means or manner that was determined by a United States Federal court or State court to violate applicable Federal or State criminal law and whether the information was obtained through a communication that was subject to the attorney-client privilege or work product doctrine.

The WB-INFO form also contains a declaration made under the penalty of perjury, as well as a legal representative certification (if applicable). The purpose of these sections is to help deter the submission of false or misleading information, and the resulting inefficient use of the Agency's resources. The requirement would also mitigate the potential harm to motor vehicle manufacturers, part suppliers, and dealerships resulting from false or misleading information.

Specifically, the proposed form WB-INFO would require the potential whistleblower to declare under penalty of perjury under the laws of the United States that the information contained in the WB-INFO form is true and correct to the best of the potential whistleblower's

knowledge, information and belief. Moreover, the statement would acknowledge the potential whistleblower's understanding that he or she may be subject to prosecution and ineligible for an award if, in the potential whistleblower's submission of information, other dealings with NHTSA, or dealings with another authority in connection with a related action, the potential whistleblower knowingly and willfully makes any false, fictitious, or fraudulent statements or representations, or uses any false writing or document knowing that the writing or document contains any false, fictitious, or fraudulent statement or entry. Finally, if the potential whistleblower wanted to submit the WB-INFO form anonymously and is represented by a legal representative, the WB-INFO form contains a section for the potential whistleblower's legal representative's certification that he or she has reviewed the form for accuracy and that the information contained in the WB-INFO form is true and correct to the best of the legal representative's knowledge, information and belief. The legal representative also certifies that he or she has verified the identity of the potential whistleblower on whose behalf the form is being submitted by viewing the potential whistleblower's valid, unexpired government issued identification and will retain an original signed copy of the form, with Section F signed by the potential whistleblower. Finally, the legal representative certifies that he or she has obtained the potential whistleblower's non-waivable consent to provide NHTSA with his or her original signed WB-INFO form in the event that NHTSA requests it.

N. Proposed Appendix B - Form WB-RELEASE

The Agency is proposing form WB-RELEASE in appendix B for those whistleblowers who wish to provide prior written consent for the Agency to disclose information that could reasonably be expected to reveal the whistleblower's identity. The Agency requests comment on whether the form WB-RELEASE should be prescribed by regulation, whether it would be better to specify the content of the form (and not the form itself), or whether the Agency should take a different approach.

Due to the way NHTSA investigates, in the course of an inquiry or analysis surrounding a whistleblower's allegations, it may become necessary for NHTSA to reveal information that reasonably could be expected to reveal the whistleblower's identity to persons or their counsel or agents at the organization or institution against whom such allegations are made or other entities in order to gather needed information on the alleged safety issue or misconduct that the whistleblower has brought to NHTSA's attention. The WB-RELEASE form provides whistleblowers a way to provide such consent. Consent is voluntary. The Agency may request that a whistleblower provide such consent, as such consent may facilitate NHTSA's review of the claim.

O. Proposed Appendix C - Form WB-AWARD

The Agency proposes to include form WB-AWARD in appendix C to part 513. Use of a standardized form will be an efficient way for the Agency to review whistleblower award claims. The Agency requests comment on whether the form WB-AWARD should be prescribed by regulation, whether it would be better to specify the content of the form (and not the form itself), or whether the Agency should take a different approach.

Proposed form WB-AWARD, and the instructions thereto, would request basic information about a claimant and his or her legal representative (if applicable). The form would also request information on the issue/information submitted by the claimant, information regarding the Notice of Covered Action, information on how the claimant acquired the original information, as well as other information relevant to the claimant's eligibility for an award.

The WB-AWARD form also provides an opportunity for the claimant to explain why they should receive an award, and any other information that may be relevant in light of the criteria for determining the amount of an award.

The WB-AWARD form also would require the claimant to declare under the penalty of perjury under the laws of the United States that the information contained in the WB-AWARD form is true and correct to the best of the claimant's knowledge, information and belief.

Moreover, the statement would acknowledge the claimant's understanding that he or she may be subject to prosecution and ineligible for an award if, in the claimant's submission of information, other dealings with NHTSA, or dealings with another authority in connection with a related action, the claimant knowingly and willfully makes any false, fictitious, or fraudulent statements or representations, or uses any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry.

III. Public Participation

This section describes how you can participate in the commenting process.

(1) How do I prepare and submit comments?

Your comments must be written. To ensure that your comments are correctly filed in the docket, please include the docket number NHTSA–2022-0098 in your comments. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using the Optical Character Recognition (OCR) process, thus allowing NHTSA to search and copy certain portions of your submissions. Please note that pursuant to the Data Quality Act, in order for the substantive data to be relied upon and used by NHTSA, it must meet the information quality standards set forth in the Office of Management and Budget (OMB) and Department of Transportation (DOT) Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at <https://www.whitehouse.gov/omb/information-regulatory-affairs/information-policy/>. DOT's guidelines may be accessed at <https://www.transportation.gov/dotinformatiion-dissemination-quality-guidelines>.

(2) Tips for Preparing Your Comments

When submitting comments, please remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Explain why you agree or disagree, suggest alternatives, and substitute language

for your requested changes.

- Describe any assumptions and provide any technical information and/ or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified in the DATES section above.

(3) How can I be sure that my comments were received?

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail. If you submit information through email under a claim of confidentiality, as discussed below, you may request a delivery receipt.

(4) How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information (CBI), to NHTSA's Office of the Chief Counsel. When you send a comment containing CBI, you should include a cover letter setting forth the information specified in our CBI regulation.⁹¹ In addition, you should submit a copy from which you have deleted the claimed CBI to the docket by one of the methods set forth above.

NHTSA is currently treating electronic submission as an acceptable method for submitting CBI to NHTSA under 49 CFR part 512. Any CBI submissions sent via email should

⁹¹ See 49 CFR part 512.

be sent to an attorney in the Office of the Chief Counsel at the address given above under FOR FURTHER INFORMATION CONTACT. Likewise, for CBI submissions via a secure file transfer application, an attorney in the Office of the Chief Counsel must be set to receive a notification when files are submitted and have access to retrieve the submitted files. At this time, regulated entities should not send a duplicate hardcopy of their electronic CBI submissions to DOT headquarters. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the FOR FURTHER INFORMATION CONTACT section.

(5) Will the Agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

(6) How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (*e.g.*, the comments submitted in response to this document by other interested persons) at any time by going to <https://www.regulations.gov>. Follow the online instructions for accessing the dockets. You may also read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

Please note that, even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

IV. Regulatory Analyses and Notices

Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563.

This action would add part 513 to implement the whistleblower program. It has been determined that this rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

Section 603(a) of the Regulatory Flexibility Act⁹² requires the Agency to undertake an initial regulatory flexibility analysis of the proposed rule on small entities, unless the Agency certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.⁹³

I certify that this rule is not expected to have a significant economic impact on a substantial number of small entities. The proposed rules apply only to those employees and

⁹² 5 U.S.C. 601 *et seq.*

⁹³ 5 U.S.C. 605(b).

contractors of motor vehicle manufacturers, part suppliers, or dealerships who provide information to the Agency relating a potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. chapter 301 (or regulation thereunder), which is likely to cause unreasonable risk of death or serious physical injury. Companies and other entities are not eligible to participate in the program as whistleblowers. Consequently, the persons that would be subject to the proposed rule are not “small entities” for the purposes to the Regulatory Flexibility Act. Therefore, a regulatory flexibility analysis is not required for this proposed action.

National Environmental Policy Act

NHTSA has analyzed this proposed rule for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

Executive Order 13132 (Federalism)

NHTSA has examined this proposed rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The Agency has concluded that this action would not have “federalism implications” because it would not have “substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government,” as specified in section 1 of the Executive order. This proposed rule generally would apply to employees and contractors of motor vehicle manufacturers, part suppliers, or dealerships. Thus, Executive Order 13132 is not implicated and consultation with State and local officials is not required.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a

Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This proposal would not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729, February 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Pursuant to this Order, NHTSA notes as follows: This proposed rule would implement the whistleblower program, including outlining the procedures for submitting original information, applying for awards, the Agency’s procedures for making decisions on the claims, appeals of such decisions, and payment of the award. It discusses communications with individuals reporting safety information and protections afforded related to the whistleblowers’ identity. The statute was effective upon enactment.

The rule would not have retroactive effect. Under the rule of construction contained in section 24352(b) of the FAST Act, information submitted by a whistleblower in accordance with the requirements at 49 U.S.C. 30172 does not lose its status as original information solely because the whistleblower submitted the information prior to the effective date of these regulations if that information was submitted after the date of enactment of the FAST Act. Thus,

information submitted prior to the enactment of the FAST Act would not qualify as original information, and therefore cannot form the basis of an award.

Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, et. seq.), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. A person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The Information Collection Request (ICR) for a proposed new information collection described below has been forwarded to OMB for review and comment. In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information for which the agency is seeking approval from OMB.

The titles for the collection of information are forms: (1) WB-INFO, (2) WB- RELEASE, and (3) WB- AWARD. Under proposed rules §§ 513.4 and 513.9, these proposed forms would be necessary to implement section 30172 of the Safety Act.

The WB-INFO form allows a whistleblower to provide information to the Agency and its staff relating to general information about the whistleblower, information about the motor vehicle manufacturer, part supplier, or dealership about whom the concern is raised, the type and source of information being reported, the individual's legal representative (if applicable), the information about any potential motor vehicle defect, potential noncompliance, or violation or alleged violation of any notification or reporting requirement of chapter 301 or regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury, and additional information.

Form WB-RELEASE provides a means for a whistleblower to provide prior written consent for the Agency to disclose information which could reasonably be expected to reveal the whistleblower's identity.

The WB-AWARD form allows the claimant to provide information related to the claimant's eligibility for an award.

In compliance with the PRA, we announce that NHTSA is seeking comment on a new collection.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: 49 CFR Part 513, Whistleblower Program

OMB Control Number: New

Form Number(s): WB-INFO, WB-RELEASE, and WB-AWARD.

Type of Request: Approval of a new collection.

Type of Review Requested: Regular

Requested Expiration Date of Approval: Three years from the date of approval.

Summary of the Collection of Information:

Proposed form WB-INFO, which would be submitted pursuant to proposed rule § 513.4 would request the following information:

- (1) Background information regarding the person submitting the form, including the person's name, contact information and occupation and the person's relationship to the company about whom the concern is raised;
- (2) Information about the motor vehicle manufacturer, part supplier or dealership about whom the concern is raised;
- (3) If the person is represented by a legal representative, the name and contact information for the person's legal representative (in cases of anonymous submissions the person must be represented by a legal representative);
- (4) Information regarding the issue involving a motor vehicle manufacturer, part supplier, or dealership, including the date of the alleged issue, whether the conduct is on-going, and whether the person or their counsel had any prior communication with NHTSA,
- (5) Whether the allegation is related to a potential safety-related defect or

noncompliance with an applicable FMVSS, and if so a detailed description of the allegation and how the allegation affects vehicle/system/component performance and/or compliance, and the make, model, model year, part number, component number, etc. if known.

(6) Whether the allegation is related to any violation or alleged violation of any notification or reporting requirement of the Safety Act, and if so, a description of the notification or reporting issue, including all facts pertinent to the alleged violation;

(7) A description of supporting materials in the whistleblower's possession and the availability and location of other additional supporting materials;

(8) A description of how the person learned about or obtained the information submitted, and, if any information was obtained from a public source, a description of that source;

(9) Identification of documents or other information in the submission that the person believes could reasonably be expected to reveal the person's identity and the basis for that belief;

(10) Whether the person or his or her legal representative has taken any other action regarding the issue, and if so, a description;

(11) Whether the person acquired the information through a means or manner that has been determined by a United States Federal court or a State court to violate applicable Federal or State criminal law, and if so, details regarding that determination;

(12) Whether the person acquired the information that he or she is submitting to NHTSA solely through a communication that was subject to a privilege, such as the attorney-client privilege or attorney work product doctrine;

(13) Any other relevant information;

(14) A declaration, signed under penalty of perjury under the laws of the United States that the information provided to NHTSA is true and correct to the best of the person's knowledge, information and belief and acknowledgement from the person that they may

be subject to prosecution and ineligible for a whistleblower award if, in their submission of information, their other dealings with the National Highway Traffic Safety Administration, or their dealings with another authority in connection with a related action, they knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry; and

(15) If represented by a legal representative, the legal representative's certification certifying that the legal representative has verified the identity of the individual who completed form WB-INFO by viewing that individual's valid, unexpired government issued identification, reviewed the individual's WB-INFO form for accuracy, and that the information contained therein is true and correct to the best of the legal representative's knowledge, information and belief; the legal representative will retain an original, signed copy of the form with section F filled out by their client in their file; and that the legal representative has obtained the whistleblower's non-waivable consent to provide the National Highway Traffic Safety Administration with the whistleblower's original signed WB-INFO form in the event that NHTSA requests it.

Proposed form WB-RELEASE would request the following information:

- (1) Background information regarding the whistleblower submitting the WB-RELEASE form, including the person's name and address;
- (2) The name of the motor vehicle manufacturer, part supplier and/or dealership to which the whistleblower's issue or information relates;
- (3) An acknowledgment that the person consents to disclosure of information that could reasonably be expected to reveal the person's identity; and
- (4) Signature of the whistleblower and date.

Proposed form WB-AWARD, which would be submitted pursuant to proposed rule § 513.9 would require the following information:

- (1) The claimant's name, address and contact information;
- (2) If the person is represented by a legal representative, the name and contact information for the legal representative;
- (3) Details concerning the issue, including the manner in which the information was submitted to NHTSA, the date when the information was submitted, the form in which it was submitted, and the name of the motor vehicle manufacturer, part supplier and/or dealership to which the issue or information relates.
- (4) Information concerning the Notice of Covered Action to which the claim relates, including the date of the Notice, the Notice Number, and the Case name and number; and information regarding related actions, if applicable;
- (5) Information relating to the claimant's eligibility for an award, including whether the person acquired the information solely through a communication that was subject to the attorney-client privilege or attorney work product doctrine; whether the person acquired the original information by a means or manner that was determined by a United States Federal court or State court to violate applicable Federal or State criminal law; and whether the person is currently a subject or target of a criminal investigation or convicted of a criminal violation in connection with the allegations or conduct the person submitted to NHTSA. If any of the circumstances noted above were applicable, the person is requested to provide an explanation.
- (6) An explanation of the reasons that the person believes that he or she should receive an award in connection with the person's submission of information to NHTSA, including any information that might be relevant in light of the criteria for determining the amount of an award set forth in 49 U.S.C. 30172 and proposed 49 CFR part 513; and
- (7) A declaration by the claimant under penalty of perjury under the laws of the United States that the information provided in the WB-AWARD form is true and correct to the best of the person's knowledge, information and belief and acknowledgement from the person that they may be subject to prosecution and ineligible for a whistleblower award if, in their

submission of information, their other dealings with the National Highway Traffic Safety Administration, or their dealings with another authority in connection with a related action, they knowingly and willfully make any false, fictitious or fraudulent statements or representations, or use any false writing or document knowing that the writing or document contains any false, fictitious or fraudulent statement or entry.

Description of the Need for the Information and Use of the Information:

The collection of information on proposed form WB-INFO would be used to permit the Agency and its staff to collect information from whistleblowers regarding any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act or regulation thereunder for which NHTSA has enforcement authority. NHTSA investigators consider information provided by whistleblowers, which may lead to formal actions like an investigation, recall, or civil penalty enforcement action. If this information leads to a successful resolution of a covered action resulting in monetary sanctions collected by the United States in excess of \$1,000,000, a whistleblower would be eligible for an award.

The WB-RELEASE form would provide a means for the whistleblower to provide consent for the Agency to disclose information which could reasonably be expected to reveal the identity of the whistleblower. Being able to disclose this information may allow the Agency to open a public investigation or proceed more efficiently with an investigation into the whistleblower's allegations.

The WB-AWARD form would permit the Agency to collect information relating to a claimant's eligibility for an award, the claimant's position on why they should receive an award, and the claimant's view on the criteria for determining the amount of an award. This would allow the Administrator to determine claims for whistleblower awards.

Affected Public:

The likely respondents to proposed form WB-INFO would be those employees or

contractors of motor vehicle manufacturers, part suppliers, and dealerships who wish to provide the Agency staff with information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act or regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury.

The likely respondents to proposed form WB-RELEASE would be those individuals who wish to provide prior written consent to NHTSA for disclosure of information that could reasonably be expected to reveal that individual's identity.

The likely respondents to proposed form WB-AWARD would be those individuals who have provided the Agency with original information by filing a WB-INFO form, and who believe they are eligible for an award under 49 CFR part 513.

Estimated Number of Respondents for Proposed Form WB-INFO:

In the time since the enactment of the FAST Act in 2015, NHTSA has received over 150 submissions that it has considered potential whistleblower submissions.⁹⁴ The Agency estimates that there will be approximately 50 individuals per fiscal year who may wish to file such form. The Agency estimated the number of individuals based on the current number of whistleblower submissions and the Agency's view that submissions will increase once the whistleblower reward program is more widely known, after the rules are promulgated and additional whistleblower awards are made.

Frequency for Proposed Form WB-INFO:

The Agency expects that the individual will complete one form detailing all potential

⁹⁴ Because there is no required method or form of submission, NHTSA has taken a broad view of what is considered whistleblower information. Such information comes from a variety of sources, such as Vehicle Owner Questionnaires ("VOQ"), information provided by telephone, and information submitted by letter or email to the Agency. We have taken this broad view not only to review and track the information submitted, but also to better protect the confidentiality of those who have provided whistleblower information to the Agency.

issues they are aware of.

Number of Responses for Proposed Form WB-INFO: The Agency anticipates there will be approximately 50 individuals per fiscal year who may wish to file such form. NHTSA assumes half of this number will have a legal representative.

Estimated Total Annual Burden Hours for Proposed Form WB-INFO:

The proposed collection is estimated to involve approximately an average of 10 burden hours per individual who completes the WB-INFO form, and 20 hours per individual who has a legal representative complete the WB-INFO form. The completion time will depend largely on the complexity of the alleged violation and the amount of information the whistleblower possesses in support of the allegations. The Agency estimates that the total annual PRA burden of form WB-INFO is 750 hours per year (25 respondents who use a legal representative \times 20 hours) plus (25 respondents who fill out their own form \times 10 hours). The Agency invites public comment on the accuracy of its estimates.

Estimated Total Annual Burden Cost for Proposed Form WB-INFO:

We estimate the total annual burden cost for the Proposed Form WB-INFO to be \$266,000. We base the estimate on the following:

Costs for Legal Representatives to Fill out the Proposed Form WB-INFO:

Under the proposed rules, a potential whistleblower who discloses their identity may elect to retain a legal representative to represent them, while an anonymous potential whistleblower is required to retain a legal representative to represent them. The Agency expects that in most of those instances where a legal representative is retained, the whistleblower's/claimant's legal representative will complete or assist in the completion of some or all of the required forms on the client's behalf. The Agency also expects that in the vast majority of cases in which a whistleblower/claimant is represented by a legal representative, such person will enter into a contingency fee arrangement with such legal representative, providing that the legal representative will provide representation in exchange for a fixed percentage of any

recovery under the whistleblower award program. Therefore, the Agency believes that most persons will not incur any direct expenses for attorneys' fees for the completion of required forms. The Agency also anticipates that a very small number of people will enter into hourly fee arrangements with counsel. However, the Agency does believe that approximately half of potential whistleblowers will have a legal representative submit the forms. The Agency requests comment on this estimate. The Agency has estimated the cost of using a legal representative regardless of whether the fee is contingent or hourly.

To estimate those expenses, the Agency makes the following assumptions:

- (i) The Agency will receive approximately 50 WB-INFO forms,
- (ii) Of these approximate 50 WB-INFO forms, potential whistleblowers will have a legal representative submit approximately 25 WB-INFO forms;
- (iii) Legal representative cost will be on average \$532⁹⁵ per hour; and
- (iv) Legal representatives will bill on average 20 hours to review materials and complete form WB-INFO.⁹⁶

Based on those assumptions, the Agency estimates that each year the cost of legal representative time for completion of the forms will be \$266,000 for the completion of form WB-INFO ($(\$532 \times 20 \text{ hours}) \times 25 \text{ respondents}$). The Agency invites public comment on the accuracy of its estimate requirements that would result from the proposed regulations.

Costs of Submission

The Agency anticipates that the vast majority of whistleblowers/claimants will submit the forms using electronic means rather than mail. Therefore, the expected cost of submission of the forms is \$0.00. The Agency invites public comment on the accuracy of its estimate requirements that would result from the proposed regulations.

⁹⁵ This amount is based on the U.S Attorney's Office for the District of Columbia Fees Matrix for 2015-2021, assuming that an attorney with 11-15 years of experience assists the whistleblower. *See* <https://www.justice.gov/file/1461316/download>.

⁹⁶ The Agency expects that counsel will need to expend additional time to gather information from the whistleblower or review sources of information needed to complete the forms, which is why this estimate is higher than the estimate to just complete the form.

Estimated Number of Respondents for Proposed Form WB-RELEASE

The Agency estimates that it would receive 45 WB-RELEASE forms per year.

Frequency for Proposed Form WB-RELEASE:

The Agency expects that the individual will complete one form per year.

Number of Responses for Proposed Form WB-RELEASE: The Agency anticipates there will be approximately 45 individuals per fiscal year who may wish to file a form WB-RELEASE.

Estimated Total Annual Burden Hours for Proposed Form WB-RELEASE:

The Agency estimates that it will take 15 minutes per individual to complete the form, and the Agency estimates that it would receive 45 WB-RELEASE forms per year. The Agency anticipates that potential whistleblowers will complete and submit for themselves 20 WB-RELEASE forms annually and that legal representatives will submit on their client's behalf 25 WB-RELEASE forms annually. Thus, the Agency estimates that that estimated annual PRA burden of form WB-RELEASE is 11.25 hours per fiscal year ($45 \text{ respondents} \times 15 \text{ minutes}/60$).

Estimated Total Annual Burden Cost for Proposed Form WB-RELEASE:

We estimate the total annual burden cost for the Proposed Form WB-RELEASE to be \$3,325. We base the estimate on the following:

Involvement and Cost of Legal representatives:

Under the proposed rules, a potential whistleblower who discloses their identity may elect to retain a legal representative to represent them, while an anonymous potential whistleblower is required to retain a legal representative to represent them. The Agency expects that in most of those instances where a legal representative is retained, the potential whistleblower's legal representative will complete or assist in the completion of some or all of the required forms on the client's behalf. The Agency also expects that in the vast majority of cases in which a potential whistleblower is represented by a legal representative, such person will enter into a contingency fee arrangement with such legal representative, providing that the

legal representative will provide representation in exchange for a fixed percentage of any recovery under the whistleblower award program. Therefore, the Agency believes that most persons will not incur any direct expenses for attorneys' fees for the completion of required forms. The Agency also anticipates that a very small number of people will enter into hourly fee arrangements with counsel. The Agency requests comment on this estimate. The Agency has estimated the cost of using a legal representative regardless of whether the fee is contingent or hourly.

To estimate those expenses, the Agency makes the following assumptions:

- (i) The Agency will receive 45 WB-RELEASE forms annually;
- (v) Potential whistleblowers will have a legal representative submit approximately 25 WB-RELEASE forms annually;
- (vi) Attorney cost will be on average \$532⁹⁷ per hour; and
- (vii) Attorneys will bill on average 15 minutes to complete form WB-RELEASE.

Based on those assumptions, the Agency estimates that each year the cost of attorney time for completion of the forms will be \$3,325 for the completion of form WB-RELEASE ($(\$532 \times 15 \text{ minutes}/60) \times 25 \text{ respondents}$). The Agency invites public comment on the accuracy of its estimate requirements that would result from the proposed regulations.

Costs of Submission

The Agency anticipates that the vast majority of potential whistleblowers will submit the forms using electronic means rather than mail. Therefore, the expected cost of submission of the forms is \$0.00. The Agency invites public comment on the accuracy of its estimate requirements that would result from the proposed regulations.

⁹⁷ This amount is based on the U.S Attorney's Office for the District of Columbia Fees Matrix for 2015-2021, assuming that an attorney with 11-15 years of experience assists the whistleblower. *See* <https://www.justice.gov/file/1461316/download>.

Estimated Number of Respondents for Proposed Form WB-AWARD:

Each individual who has submitted a form WB-INFO and wishes to be considered for an award under the program would be required to provide a WB-AWARD form to the Agency. A claimant could only submit a WB-AWARD form after there has been a “Notice of Covered Action” published on the Agency’s website pursuant to proposed rule § 513.9. The Agency estimates that it will post approximately 1-2 such Notices each year. The Agency bases this estimate by looking at the enforcement actions resulting in civil penalties exceeding \$1,000,000 over the last several years, not including deferred penalties not collected or performance amounts. In some years, the Agency had not collected any civil penalties exceeding \$1,000,000. In another year, the Agency had several instances where it collected more than \$1,000,000 in civil penalties in connection with an enforcement action. The Agency believes that as this whistleblower program grows, more actionable submissions will be made and, as a consequence, the Agency will have more actions resulting in collected monetary sanctions exceeding \$1,000,000.

Considering the estimate of the anticipated yearly covered actions, and the Agency’s experience to date, the Agency estimates that it would receive approximately 2 WB-AWARD forms each year.⁹⁸

Frequency for Proposed Form WB-AWARD:

The Agency expects that the individual will complete one form.

Number of Responses for Proposed Form WB-AWARD: The Agency anticipates there will be approximately 2 individuals per fiscal year who may wish to file such.

Estimated Total Annual Burden Hours for Proposed Form WB-AWARD:

The proposed collection is estimated to involve approximately 10 burden hours per

⁹⁸ While it is unlikely that there will be whistleblower information provided in connection with every Notice of Covered Action posted by the Agency, this estimate calculates burden hours as if there were one claim for each Covered Action.

individual seeking to be considered for an award under the Agency's whistleblower program.

The Agency estimates that the estimated annual PRA burden of form WB-AWARD is 20 hours per fiscal year (2 respondents \times 10 hours). The Agency invites public comment on the accuracy of its estimates.

Estimated Total Annual Burden Cost for Proposed Form WB-AWARD:

We estimate the total annual burden cost for the Proposed Form WB-AWARD to be \$10,640.

We base the estimate on the following:

Involvement and Cost of Legal representatives

Under the proposed rules, a potential whistleblower who discloses their identity may elect to retain a legal representative to represent them, while an anonymous potential whistleblower is required to retain a legal representative to represent them. The Agency expects that in most of those instances where a legal representative is retained, the potential whistleblower's/claimant's legal representative will complete or assist in the completion of some or all of the required forms on the client's behalf. The Agency also expects that in the vast majority of cases in which a potential whistleblower/claimant is represented by a legal representative, such person will enter into a contingency fee arrangement with such legal representative, providing that the legal representative will provide representation in exchange for a fixed percentage of any recovery under the whistleblower award program. Therefore, the Agency believes that most persons will not incur any direct expenses for legal representatives' fees for the completion of required forms. The Agency also anticipates that a very small number of people will enter into hourly fee arrangements with counsel. However, the Agency does believe that all individuals submitting a WB-AWARD form will use a legal representative. The Agency requests comment on this estimate. The Agency has estimated the cost of using a legal representative regardless of whether the fee is contingent or hourly.

To estimate those expenses, the Agency makes the following assumptions:

- (i) The Agency will receive approximately 2 WB-AWARD forms annually;

- (ii) Claimants will have a legal representative submit 2 WB-AWARD forms annually;
- (iii) Legal representative cost will be on average \$532⁹⁹ per hour; and
- (iv) Legal representatives will bill on average 10 hours to complete a form WB-AWARD.

Based on those assumptions, the Agency estimates that each year the cost of legal representatives' time for completion of the forms will be \$10,640 for the completion of form WB-AWARD ($(\$532 \times 10 \text{ hours}) \times 2 \text{ respondents}$). The Agency invites public comment on the accuracy of its estimate requirements that would result from the proposed regulations.

Costs of Submission

The Agency anticipates that the vast majority of claimants will submit the forms using electronic means rather than mail. Therefore, the expected cost of submission of the forms is \$0.00. The Agency invites public comment on the accuracy of its estimate requirements that would result from the proposed regulations.

Mandatory Collection of Information

A person would be required to complete and submit a WB-INFO form and to submit a WB-AWARD form in order to qualify for a whistleblower award.

Public Comments Invited:

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Agency requests comments in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of burden of the proposed collections of information;

⁹⁹ This amount is based on the U.S Attorney's Office for the District of Columbia Fees Matrix for 2015-2021, assuming that an attorney with 11-15 years of experience assists the whistleblower. *See* <https://www.justice.gov/file/1461316/download>.

- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The Agency requests comment and supporting empirical data on the burden and cost estimates for the proposed rule, including the costs that whistleblowers/claimants may incur.

A comment to OMB is most effective if OMB receives it within 30 days of publication. Comments on the proposed information requirements should be submitted to: Office of Management and Budget at www.reginfo.gov/public/do/PRAMain. To find this particular information collection, select “Current under Review—Open for Public Comment” or use the search function. PRA comments are due within 30 days following publication of this document in the **FEDERAL REGISTER**.

The Agency recognizes that the collection of information contained in today’s proposed rule may be subject to revision in response to public comments.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language.

Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public’s needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn’t clear?

- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

List of Subjects in 49 CFR Part 513

Administrative procedure and practice, Claims, Freedom of information, Imports, Investigations, Lawyers, Motor vehicle safety, Privacy, Reporting and record keeping requirements, Tires, Whistleblowing.

Proposed Regulatory Text

For the reasons stated in the preamble, the National Highway Traffic Safety Administration proposes to add 49 CFR part 513 to read as follows:

PART 513- WHISTLEBLOWER PROGRAM

Sec.

- | | |
|--------|--|
| 513.1 | General. |
| 513.2 | Definitions. |
| 513.3 | Representation. |
| 513.4 | Procedures for submitting original information. |
| 513.5 | Confidentiality. |
| 513.6 | Prerequisites to the consideration of an award. |
| 513.7 | Whistleblowers ineligible for an award. |
| 513.8 | Provision of false information. |
| 513.9 | Procedures for making a claim for a whistleblower award. |
| 513.10 | Award determinations. |

513.11 Appeals of award determinations.

513.12 Procedures applicable to the payment of awards.

Appendix A- Form WB-INFO

Appendix B- Form WB-RELEASE

Appendix C- Form WB-AWARD

Authority: 49 U.S.C. 322, 49 U.S.C. 30172; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

§ 513.1 General.

This part describes the whistleblower program established by the Agency to implement the Motor Vehicle Safety Whistleblower Act, 49 U.S.C. 30172, explains procedures that a potential whistleblower must follow to be eligible for an award, and the circumstances under which information that may reasonably be expected to reveal the identity of a whistleblower may be disclosed by National Highway Traffic Safety Administration (NHTSA). Potential whistleblowers should read these procedures carefully because failure to take required steps in a timely fashion in conformance with these rules may result in disqualification from receiving an award. Questions about the whistleblower program or these rules should be directed to the NHTSA Office of the Chief Counsel at NHTSAWhistleblower@dot.gov. Unless expressly provided for in this part, no person is authorized to make any offer or promise, or otherwise bind the Agency with respect to the payment of any award or the amount thereof, and any such offer or promise will not be honored.

§ 513.2 Definitions.

(a) *Statutory definitions.* All terms used in this part have the same meaning as in 49 U.S.C. 30102(a) or (b), unless otherwise defined in this part.

(b) *Other terms.* As used in this part:

Administrative action. The term “administrative action” means all or a portion of an action, other than a judicial action, brought by NHTSA or the U.S. Department of Transportation

under 49 U.S.C. chapter 301 that may result in civil penalties or other monetary payment paid to and collected by the United States government. It specifically includes settlement agreements and consent orders that are entered into by the Agency.

Agency. The term “Agency” refers to the National Highway Traffic Safety Administration (NHTSA).

Collected monetary sanctions. The term “collected monetary sanctions” means monies, including penalties and interest, ordered or agreed to be paid and that have been collected by the United States, pursuant to the authority in 49 U.S.C. 30165 or under the authority of 49 U.S.C. 30170.

Contractor. The term “contractor” means an individual presently or formerly providing goods or services to a motor vehicle manufacturer, part supplier, or dealership pursuant to a contract.

Covered action. The term “covered action” means any administrative or judicial action, including any related administrative or judicial action brought by the Secretary, NHTSA, or the Attorney General under 49 U.S.C. chapter 301, or the regulations in this chapter that in the aggregate results in monetary sanctions exceeding \$1,000,000. The over \$1,000,000 threshold can be satisfied if the total amount of monetary sanctions paid by multiple defendants or parties and collected by the United States totals more than \$1,000,000 in the covered action.

Dealership. The term “dealership” means a person selling and distributing motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

Employee. The term “employee” means an individual presently or formerly employed by a motor vehicle manufacturer, part supplier, or dealership.

Independent knowledge or analysis. The term “knowledge” as used in this part means factual information in the potential whistleblower’s possession that is not generally known or available to the public and is not already known to NHTSA. The potential whistleblower may

gain independent knowledge from the potential whistleblower's experiences, communications, and observations in the potential whistleblower's business or social interactions. As used in this part, "analysis" means the potential whistleblower's examination and evaluation of information that may be generally or publicly available, but which reveals information that is not generally known or available to the public. This analysis must be the potential whistleblower's own analysis, whether done alone or in combination with others.

(i) NHTSA will not consider the potential whistleblower's information to be derived from the potential whistleblower's independent knowledge or analysis if the potential whistleblower obtained the information:

(A) Solely through a communication that was subject to the attorney-client privilege or work product doctrine; or

(B) By a means or in a manner that has been determined by a United States Federal court or State court to violate applicable Federal or State criminal law.(ii) [Reserved]

Motor vehicle defect. The term "motor vehicle defect" means a defect in a motor vehicle or item of motor vehicle equipment.

Noncompliance. A "noncompliance" occurs when a motor vehicle or item of motor vehicle equipment does not comply with an applicable Federal motor vehicle safety standard

Original information. The term "original information" means information that:

- (i) Is derived from the independent knowledge or analysis of an individual;
- (ii) Is not known to the Secretary or Agency from any other source, unless the individual is the original source of the information;
- (iii) Is not exclusively derived from an allegation made in a judicial or an administrative action, in a governmental report, a hearing, an audit, or an investigation, or from the news media, unless the individual is a source of the information; and
- (iv) Is provided to the Agency for the first time after December 4, 2015.

Original Information that leads to a successful resolution. The Agency will consider that the potential whistleblower provided original information that “leads to” a successful resolution of a covered action in the following circumstances:

(i) The potential whistleblower gave the Agency original information that was sufficiently specific, credible and timely to cause the Agency to open an investigation, reopen an investigation that the Agency had closed, continue an investigation the Agency would not have continued but for the information, or to inquire concerning a different potential violation of chapter 301, or the regulations in this chapter as part of a current investigation, and the U.S. Department of Transportation, Agency, or U.S Department of Justice brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of the potential whistleblower’s original information; or

(ii) The potential whistleblower gave the Agency original information about conduct that was already under investigation by the Agency and the potential whistleblower’s information significantly contributed to the success of the covered action and the U.S. Department of Transportation, Agency, or U.S. Department of Justice brought a successful judicial or administrative action based in whole or in part on conduct that was the subject of the potential whistleblower’s original information.

Part supplier. The term “part supplier” means a manufacturer of motor vehicle equipment.

Potential whistleblower. The term “potential whistleblower” refers to an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership submitting information to the Agency in accordance with and pursuant to this part.

Related administrative or judicial action. The term “related administrative or judicial action” means an action that was brought under 49 U.S.C. chapter 301 by the U.S. Department of Justice, the U.S Department of Transportation, or the Agency and is based on the original information provided by the whistleblower.

Secretary. The term “Secretary” means the Secretary of Transportation.

Successful resolution. A successful resolution, when referring to any administrative or judicial action brought by the Secretary, Agency, or the Attorney General relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement under 49 U.S.C. chapter 301, or the regulations in this chapter, which is likely to cause unreasonable risk of death or serious physical injury, includes any settlement of the action by the U.S. Department of Transportation, Agency or the U.S. Department of Justice or final decision or judgment in whole or in partial favor of the Agency, the U.S. Department of Transportation, or the U.S. Department of Justice.

Whistleblower. The term “whistleblower” means any employee or contractor of a motor vehicle manufacturer, part supplier, or dealership who voluntarily provides to the Agency original information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. chapter 301, or the regulations in this chapter, which is likely to cause unreasonable risk of death or serious physical injury.

§ 513.3 Representation.

A whistleblower or potential whistleblower may be represented by a legal representative.

§ 513.4 Procedures for submitting original information.

(a) A potential whistleblower’s submission must be made by completing a WB-INFO form and submitting it to the Office of the Chief Counsel, National Highway Traffic Safety Administration, by email to NHTSAWhistleblower@dot.gov or other submission method expressly designated on NHTSA’s website for such submissions.

(b) By completing the WB-INFO form, the potential whistleblower must declare under penalty of perjury at the time the whistleblower submits information pursuant to paragraph (a) of this section that the information is true and correct to the best of the potential whistleblower’s knowledge and belief.

(c) A potential whistleblower may provide original information to the Agency anonymously through use of a legal representative. The legal representative must submit the information on behalf of the potential whistleblower pursuant to the procedures specified in paragraph (a) of this section. Prior to the legal representative's submission, the potential whistleblower must provide the legal representative with a completed WB-INFO form that the potential whistleblower has signed under the penalty of perjury. When the legal representative makes the submission on behalf of the potential whistleblower, the legal representative must certify that the legal representative:

(1) Has verified the potential whistleblower's identity;

(2) Has verified that the potential whistleblower is an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership; Has reviewed the potential whistleblower's signed WB-INFO form for accuracy and that the information contained therein is true and correct to the best of the legal representative's knowledge, information and belief; and

(3) Has obtained the potential whistleblower's non-waivable consent to provide the Agency with the original WB-INFO form for the potential whistleblower in the event that the Agency requests it.

(d) If a potential whistleblower submitted original information to the Agency after December 4, 2015, but before [effective date of final rule], the submission will be deemed to satisfy the requirements set forth in paragraphs (a) and (b) of this section.

§ 513.5 Confidentiality.

(a) *In general.* Notwithstanding 49 U.S.C. 30167, the Secretary and any officer or employee of the U.S. Department of Transportation shall not disclose any information, including information provided by a whistleblower to the Secretary, that could reasonably be expected to reveal the identity of a whistleblower, except in accordance with the provisions of 5 U.S.C 552a, unless:

(1) Disclosure is required to a defendant or respondent in connection with a public

proceeding instituted by the Secretary, the Agency, or any entity described in paragraph (c) of this section;

(2) The whistleblower provides prior written consent for the information to be disclosed;

or

(3) The Secretary, or other officer or employee of the U.S. Department of Transportation, receives the information through another source, such as during an inspection or investigation under 49 U.S.C. 30166, and has the authority under other law to release the information.

(b) *Use by Attorney General.* Notwithstanding paragraph (a) of this section, nothing in this section is intended to limit the ability of the Attorney General to present such evidence to a grand jury or to share such evidence with potential witnesses or defendants in the course of an ongoing criminal investigation.

(c) *Availability to Federal Government agencies.* Notwithstanding paragraph (a) of this section, without the loss of its status as confidential in the hands of the Administrator, all information referred to in paragraph (a) of this section may, in the discretion of the Administrator, when determined by the Administrator to be necessary or appropriate to accomplish the purposes of 49 U.S.C. chapter 301, be made available to the U.S. Department of Justice or an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction, provided that each entity shall maintain information as confidential in accordance with the requirements of paragraph (a) of this section.

(d) *Redaction.* When disclosing any information under paragraph (a) of this section, the Secretary and any officer or employee of the U.S. Department of Transportation shall take reasonable measures not to reveal the identity of the whistleblower by taking measures not to reveal the whistleblower's name, and redacting the whistleblower's name when information is disclosed under paragraph (a) of this section.

(e) *Section 552(b)(3)(B).* The identity of the whistleblower and the information provided to Secretary by the whistleblower shall be considered exempt from disclosure under the

provisions of 5 U.S.C. 552 to the fullest extent permitted by law.

(f) *The whistleblower.* The person should self-identify as a whistleblower at the time the person first submits original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements under 49 U.S.C. chapter 301, or the regulations in this chapter, by submitting a WB-INFO form. If the person is represented by a legal representative, that legal representative should identify the client as a whistleblower at the time the legal representative first submits original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements under 49 U.S.C. chapter 301, or the regulations in this chapter, on behalf of the legal representative's client in the WB-INFO form.

§ 513.6 Prerequisites to the consideration of an award.

(a) Subject to the eligibility requirements described in this part, NHTSA may, but is not required to, authorize payment of an award to one or more persons who:

- (1) Provide a voluntary submission to the Agency;
- (2) Provides in that submission original information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of 49 U.S.C. chapter 301, or the regulations in this chapter, which is likely to cause unreasonable risk of death or serious physical injury; and
- (3) The original information provided in that submission leads to the successful resolution of a covered action.

(b) To be eligible, the person must have given the Agency original information in the form and manner that the Agency requires in § 513.4. The Agency may, for good cause, waive this requirement in this paragraph (b).

§ 513.7 Whistleblowers ineligible for an award.

No award under § 513.10 shall be made:

(a) If the amount of monetary sanctions collected in a covered action does not exceed \$1,000,000;

(b) To any whistleblower who is convicted of a criminal violation related to the covered action for which the whistleblower otherwise could receive an award under this part;

(c) To any whistleblower who, acting without direction from an applicable motor vehicle manufacturer, part supplier, or dealership, or agent thereof, deliberately causes or substantially contributes to the alleged violation of a requirement of 49 U.S.C. chapter 301, or the regulations in this chapter;

(d) To any whistleblower who submits information to the Agency that is based on the facts underlying the covered action submitted previously by another whistleblower;

(e) To any whistleblower who fails to provide the original information to the Agency in the form required by § 513.4 without good cause shown;

(f) To any whistleblower who knowingly and intentionally makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(g) If the applicable motor vehicle manufacturer, parts supplier, or dealership has an internal reporting mechanism in place to protect employees from retaliation to any whistleblower who fails to report or attempt to report the information through such mechanism, unless:

(1) The whistleblower reasonably believed that such an internal report would have resulted in retaliation, notwithstanding 49 U.S.C. 30171(a);

(2) The whistleblower reasonably believed that the information:

(i) Was already internally reported;

(ii) Was already subject to or part of an internal inquiry or investigation; or

(iii) Was otherwise already known to the motor vehicle manufacturer, part supplier, or dealership; or

(3) The Agency has good cause to waive this requirement in this paragraph (g).

§ 513.8 Provision of false information.

A person who knowingly and intentionally makes any false, fictitious, or fraudulent statement or representation, or who makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall not be entitled to an award under this section and shall be subject to prosecution under 18 U.S.C. 1001

§ 513.9 Procedures for making a claim for a whistleblower award.

Whenever any administrative or judicial action, including any related administrative or judicial action, brought by the U.S. Department of Transportation, Agency, or U.S. Department of Justice under 49 U.S.C. chapter 301 in the aggregate results in collected monetary sanctions exceeding \$1,000,000, the Agency will publish on the Agency's website a "Notice of Covered Action." Such Notice will be published subsequent to a final judgment, order, or agreement that alone, or in the aggregate, results in collected monetary sanctions exceeding \$1,000,000. A claimant will have ninety (90) days from the date of the Notice of Covered Action to file a claim, including any attachments, for an award based on that action, or the claim will be barred. The claim is deemed filed on the date that it is received by the Agency.

(a) To file a claim for a whistleblower award, the claimant must complete the WB-AWARD form and submit it no later than ninety (90) calendar days from the date of the Notice of Covered Action to NHTSA's Office of the Chief Counsel by email to NHTSAWhistleblower@dot.gov or another method expressly designated on NHTSA's website.

(b) If the claimant provided original information anonymously pursuant to § 513.4, the claimant must disclose the claimant's identity on the WB-AWARD form and the claimant's identity must be verified in a form and manner that is acceptable to the Agency prior to the authorization of payment of any award to such claimant.

(c) If a claimant filed a claim for a whistleblower award after December 4, 2015 (the date of the enactment of the Fixing America's Surface Transportation (FAST) Act, but before [effective date of final rule], the claim submission will be deemed to meet the requirements of §

513.9.

§ 513.10 Award determinations.

Once the time for filing any appeals of the covered action (and all related actions) has expired, or where an appeal has been filed, after all appeals in the covered action and related actions have concluded, and over \$1,000,000 in monetary sanctions have been collected, the Agency will evaluate all timely whistleblower award claims submitted on a WB-AWARD form in accordance with the criteria set forth in this part. The Agency may require the claimant to provide additional information relating to the claimant's eligibility for an award or satisfaction of any of the conditions for an award.

(a) The determination of whether, to whom, or in what amount to make an award shall be in the discretion of the Administrator. In determining whether to grant an award to a whistleblower eligible for an award and the amount of an award, the Administrator shall take into consideration, as appropriate:

(1) Whether a whistleblower reported or attempted to report the information internally to an applicable motor vehicle manufacturer, part supplier, or dealership;

(2) The significance of the original information provided by the whistleblower to the successful resolution of the covered action;

(3) The degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered action;

(4) The statutory purpose of incentivizing whistleblowers; and

(5) The public interest or such additional factors as the Administrator considers relevant.

(b) If the Administrator determines that an award is warranted, the Administrator shall determine the amount of such award or awards to one or more whistleblowers. Whistleblower awards shall be in an aggregate amount equal to:

(1) Not less than 10 percent, in total, of monetary sanctions collected in the covered action; and

(2) Not more than 30 percent, in total, of monetary sanctions collected in the covered action.

(c) Following the Administrator's determination, the Agency will send each whistleblower claimant an Order setting forth whether the claim is granted or denied, and if granted, setting forth the award amount. If the Administrator determines that an award is warranted, in no event will the total amount awarded to all whistleblowers in the aggregate be less than 10 percent or greater than 30 percent of the amount of monetary sanctions collected in the covered action.

(d) No contract with the Agency is necessary for a whistleblower to receive an award.

§ 513.11 Appeals of award determinations.

(a) A claimant may appeal any determination made by the Administrator under § 513.10 to an appropriate court of appeals of the United States not later than 30 days after the Order is issued by the Administrator.

(1) If no claimant files an appeal within 30 days after the Order is issued by the Administrator, no appeals are permitted with respect to the claim that is the subject of the Order.

(2) If any claimant appeals within 30 days after the Order is issued by the Administrator, no payments with respect to the covered action will be made until the appealed award determination action is concluded.

(3) The rules in paragraph (a)(1) and (2) of this section do not entitle claimants to obtain from the Agency any privileged materials such as pre-decisional, attorney-client privilege, attorney work product privilege, or internal deliberative process materials related to the Administrator's Order and/or any privileged material relating to whether, to whom, and in what amount to make a whistleblower award.

(b) The Agency may make redactions to the materials constituting the record as necessary, including but not limited to making redactions to comply with statutory restrictions, the Agency's enforcement and regulatory functions and regulations, and to comply with requests

for confidential treatment from law enforcement, regulatory authorities, or persons submitting information to the Agency pursuant to part 512 of this chapter.

(c) Pursuant to 49 U.S.C. 30172(h)(3), the court shall review the determination made by the Administrator in accordance with 5 U.S.C 706.

§ 513.12 Procedures applicable to the payment of awards.

(a) A recipient of a whistleblower award is entitled to payment on the award only to the extent that a monetary sanction upon which the award is based is collected in the covered action.

(b) Payment of a whistleblower award for a monetary sanction collected in connection with a covered action shall be made within a reasonable time following the later of:

- (1) The date on which the monetary sanction totaling over \$1,000,000 is collected; or
- (2) The completion of the appeals process for all award determination claims arising from the Administrator's Order relating to the covered action.

UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (“NHTSA”)

OMB APPROVAL

OMB Number:

NHTSA Form 1684

FORM WB-INFO

WHISTLEBLOWER SUBMISSION

See attached Privacy Act Statement, Submission Procedures and Completion Instructions below.

A. INFORMATION ABOUT YOURSELF

1. Last Name		2. First Name		3. M.I.
4. Street Address				5. Apartment/Unit #
6. City	7. State/Province	8. ZIP/Postal Code		9. Country
10. Telephone	11. Alt. Phone	12. Email Address		13. Preferred Method of Communication
14. Occupation				
15. Current Employer Name				
16. Current Employer Address				
17. Your relationship to the company about whom the concern is raised:				

**B. INFORMATION ABOUT THE MOTOR VEHICLE MANUFACTURER, PART SUPPLIER, OR
DEALERSHIP ABOUT WHOM THE CONCERN IS RAISED:**

1. Company Name			
2. Street Address			
3. City	4. State/Province	5. ZIP/Postal Code	6. Country

7. Do you or did you work for the motor vehicle manufacturer, part supplier or dealership about whom the concern is raised?

☐ Yes ☐ No

~~If yes, please provide dates~~

8. Does this motor vehicle manufacturer, part supplier or dealership have an internal reporting mechanism?

9. If the answer to number 8 above is yes, did you report this issue to the internal reporting mechanism?

☐ Yes. Date Reported: _____

C. LEGAL REPRESENTATIVE INFORMATION (If Applicable – See Instructions)

1. Legal representative's Name

2. Firm Name

3. Street Address

4. City

5. State/Province

6. ZIP/Postal Code

7. Country

8. Telephone

9. Email address

D. TELL US ABOUT THE ISSUE INVOLVING THE MOTOR VEHICLE MANUFACTURER, PART SUPPLIER OR DEALERSHIP:

1. Date(s) of alleged conduct:

2. Is the conduct ongoing?

☐ Yes ☐ No ☐ I Don't Know

3a. Have you or your legal representative had any prior communication with the NHTSA concerning this matter? ☐ Yes ☐ No

3b. If yes, provide the name of the NHTSA staff member(s) with whom you or your legal representative communicated and date of such communication:

4a. Is your allegation related to a potential safety-related defect or a noncompliance with an applicable Federal Motor Vehicle Safety Standard? ☐ Yes ☐ No

4b. If yes, please provide a detailed description of allegation and a detailed description of how the allegation affects vehicle/system/component performance and/or compliance. Please include the make, model, model year, part number, component number, etc. if known

5a. Is your allegation related to any violation or alleged violation of any notification or reporting requirement of the Safety Act?
☐ Yes ☐ No

5b. Provide a description of the notification or reporting issue. State in detail all facts pertinent to the alleged violation.

6. Describe all supporting materials in your possession and the availability and location of any additional supporting materials not in your possession. If necessary, please use additional sheets.

E. ADDITIONAL INFORMATION- USE ADDITIONAL SHEETS IF NECESSARY

1. Describe how you learned about or obtained the information that supports your allegations. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible.

2. Identify with particularity any documents or other information in your submission that you believe could reasonably be expected to reveal your identity and explain the basis for your belief that your identity could be reasonably expected to be revealed if the documents or information were disclosed to a third party.

3a. Have you or your legal representative taken any other action regarding the issue or your allegations? ☐ Yes ☐ No

3b. If "Yes," please provide details. Use additional sheets, if necessary.

4. Did you acquire the information through a means or manner that has been determined by a United States Federal court or a State court to violate applicable Federal or State criminal law? ☐ Yes ☐ No

If the answer to this question is yes, please contact NHTSA's Office of the Chief Counsel before you submit this form.

5. Did you acquire the original information that you are submitting to NHTSA solely through a communication that was subject to a privilege, such as the attorney-client privilege or attorney work product doctrine? ☐ Yes ☐ No

If the answer to this question is yes, please contact NHTSA's Office of the Chief Counsel before you submit this form.

6. Provide any additional information that you think may be relevant. Attach additional sheets if necessary.

F. PROSPECTIVE WHISTLEBLOWER'S DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true and correct to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information, my other dealings with the National Highway Traffic Safety Administration, or my dealings with another authority in connection with a related action, I knowingly and willfully make any false,

Print Name

Signature

Date

G. LEGAL REPRESENTATIVE CERTIFICATION (IF APPLICABLE)

<p>I certify that I have reviewed this form for accuracy and that the information contained herein is true and correct to the best of my knowledge, information and belief.</p> <p>I further certify that I have verified the identity of the person on whose behalf this form is being submitted by viewing the person's valid, unexpired government issued identification (<i>e.g.</i>, driver's license, passport) and will retain an original, signed copy of this form, with Section F signed by the person, in my records.</p>	
<p>Print Name of Legal representative and Law Firm, if Applicable</p>	
<p>Signature</p>	<p>Date</p>

Please be advised that pursuant to 5 C.F.R. § 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Privacy Act Statement

The Privacy Act of 1974 requires that the National Highway Traffic Safety Administration (NHTSA) inform individuals of the following when asking for information. This form may be used by an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership, or a legal representative acting on such person's behalf, who wishes to provide NHTSA with information relating to any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirements of 49 U.S.C. Chapter 301 or regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury. The information provided will allow the Agency to evaluate the claim and elicit information relevant to whistleblower eligibility requirements. This information may be disclosed to the U.S. Department of Justice or an appropriate department or agency of the Federal Government, acting within the scope of its jurisdiction, consistent with the confidentiality requirements set forth in 49 U.S.C. § 30172(f). NHTSA may also disclose information that could reasonably be expected to reveal the identity of a whistleblower in certain limited situations, including when the whistleblower provides prior written consent. *Id.*

Furnishing the information contained in this form is voluntary but a decision not to do so will result in you not being eligible for award consideration.

Questions concerning this form may be directed to the National Highway Traffic Safety Administration, Office of the Chief Counsel by email to NHTSAWhistleblower@dot.gov.

Notice of Whistleblower Rights and Protections

This brief description will provide you with an overview of the whistleblower rights and protections.

Whistleblowers, as that term is defined in 49 U.S.C. § 30172(a)(6), have a right to keep their identity confidential in most situations. 49 U.S.C. § 30172(f). Generally speaking, any information which reasonably could be expected to reveal the identity of a whistleblower can be disclosed only under limited circumstances. One circumstance where NHTSA could reveal such information is if the whistleblower gives prior written consent. 49 U.S.C. § 30172(f)(1)(B).

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, gives the public access to records of the Federal Government. Individuals can obtain information from many categories of records of the Government--not just

materials that apply to them personally. NHTSA must honor requests under the FOIA, with some exceptions. Information that could reasonably be expected to reveal the identity of a whistleblower is exempted from FOIA disclosure by statute. *See* 49 U.S.C. § 30172(f)(3); 5 U.S.C. § 552(b)(3)(B).

NHTSA may disclose information that could reasonably be expected to reveal the identity of a whistleblower if it follows the provisions of 5 U.S.C. § 552a (the Privacy Act of 1974). 49 U.S.C. § 30172(f)(1). The Privacy Act prohibits the disclosure of information from a system of records (where information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual) absent the written consent of the subject individual, unless the disclosure is pursuant to one of the twelve statutory conditions.

Furthermore, under 49 U.S.C. § 30171, employees providing certain motor vehicle safety information have protections from discrimination. Under 49 U.S.C. § 30171(a)(1), a motor vehicle manufacturer, parts supplier or dealership may not discharge an employee or otherwise discriminate against the employee because the employee provided, caused to be provided, or is about to provide (with knowledge of the employer) or cause to be provided to the employer or the Secretary of Transportation information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act (49 U.S.C. Chapter 301).

OMB Statement:

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number.

NHTSA estimates that completing and submitting this form will take approximately 10 hours. The OMB Control Number for this information collection is 2127-XXXX. Please send comments to the Agency regarding the accuracy of this estimate and any suggestions for reducing this burden.

The information requested on the WB-INFO form is voluntary; however, under 49 CFR Part 513 potential whistleblower is required to submit a WB-INFO form¹ and to submit a WB-AWARD form in order to

¹ 49 U.S.C. 30172(c)(2)(D).

qualify for a whistleblower award.²

The data on the WB-INFO would be used to permit the Agency and its staff to collect information from potential whistleblowers regarding any potential motor vehicle defect, potential noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act or regulation thereunder, which is likely to cause unreasonable risk of death or serious physical injury. The Agency anticipates that this information will be submitted to a dedicated email address or other method specifically designated on NHTSA's website. NHTSA intends to treat the information as confidential under the provisions of 49 U.S.C. § 30172(f).

General Information

- To be eligible for an award under NHTSA's whistleblower program, you must first provide us with your information through one of two ways. After completing this WB-INFO form, send it to NHTSA electronically to NHTSAWhistleblower@dot.gov, or submit it by any such method that the Agency may expressly designate on its website (<https://www.nhtsa.gov/laws-regulations/whistleblower-program>).
- Submitting your information is the first step. If the information you submit leads to the successful resolution of a covered action that in the aggregate results in collected monetary sanctions exceeding \$1,000,000, you will have an opportunity at a later date to submit a claim for an award. That is a separate process and is described in our whistleblower rules at 49 C.F.R. Part 513.
- You have the right to submit information anonymously. If you are submitting information anonymously, you must be represented by a legal representative in this matter and Sections C and G of this form must be completed. Otherwise, you may, but are not required to have a legal representative. If you are submitting information anonymously, please skip Part I of these instructions and proceed directly to Part II. Otherwise, please begin by following the instructions in Part I.

Part I: Instructions for filers who are disclosing their identity to NHTSA

² See 49 CFR 513.4 and 513.9(b).

- You are required to complete Sections A, B, D, E, and F of this form. If you are represented by a legal representative in this matter, you must also complete section C. Specific instructions for answering these questions can be found in Part IV below.
- If you are represented, your legal representative does not need to complete Section G.
- You will need to submit the WB-INFO form in accordance with the Submission Procedures in 49 C.F.R. Part 513.

Part II: Instructions for anonymous filers

- If you are submitting information anonymously, you must be represented by a legal representative on this matter.
- You are required to complete Sections A, B, C, D, E, and F of this form and give the signed original to your legal representative. Specific instructions for answering these questions can be found in Part IV below.
- Your legal representative must retain your signed original WB-INFO form.

Part III. Instructions for legal representatives representing anonymous filers

- Obtain a completed and signed original WB-INFO form, filled out in accordance with the Part II above. You must retain this signed original in your records.
- You must prepare a WB-INFO form, completing Sections B, C, D, and E with your client's information. You must also sign the declaration in Section G.
- You will need to submit the WB-INFO form you completed in accordance with submission procedures in 49 C.F.R. Part 513.

Part IV. Instructions for Completing Form WB-INFO

Section A: Information About Yourself

Questions 1-16: Please provide the following information about yourself:

- Last Name, First Name, and Middle Initial;
- Complete Address, including city, state/province, zip/postal code, and country;
- Your telephone number, and if available, an alternate number where you can be reached;
- Your email address (to facilitate communications, we strongly encourage you to provide your email address);
- Your preferred method of communication;
- Your occupation;
- Your current employer,
- Your current employer's address, and
- Your relationship to the company about whom the concern is raised.

Section B: Information About the Motor Vehicle Manufacturer, Part Supplier, or Dealership About Whom the Concern is Raised

Questions 1-7: Please provide the following information about the motor vehicle manufacturer, part supplier, or dealership about whom the concern is raised:

- Company name of the motor vehicle manufacturer, part supplier or dealership;
- Complete address of the motor vehicle manufacturer, part supplier, or dealership, including city, state/province, zip/postal code, and country; and
- Complete whether you work or worked for the motor vehicle manufacturer, part supplier, or dealership about whom the concern is raised. If yes, please provide dates that you work or worked for the company. If no, provide the name of the motor vehicle manufacturer, part supplier, or dealership you work or worked for.

Question 8: Please check the correct box stating whether the motor vehicle manufacturer, part supplier, or dealership about whom the concern was raised has or had an internal reporting mechanism. The choices are yes, no, and I don't know.

Question 9: If you checked the "yes" box in response to the question of whether the motor vehicle manufacturer, part supplier or dealership had an internal reporting mechanism, please provide the following information:

- If you reported the issue to your company's internal reporting mechanism, check the box "yes" and provide the date that you reported to the internal reporting mechanism.
- If you did not report the issue to your company's internal reporting mechanism, check the box "no" and provide your reason for not reporting to the internal reporting mechanism.

Section C: Legal representative Information. Complete this section only if you are represented by an legal representative in this matter. You must be represented by a legal representative, and this section must be completed, if you are submitting your information anonymously and you want to be considered for an award under NHTSA's whistleblower program.

Questions 1-9: Provide the following information about the legal representative representing you in this matter:

- Legal representative's name;
- The firm name;
- The firm's complete address, including city, state, and zip code;
- Your legal representative's telephone number; and
- Your legal representative's email address.

Section D: Tell Us About the Issue Involving the Motor Vehicle Manufacturer, Part Supplier, or

Dealership:

Question 1: Please provide the date that the alleged conduct began.

Question 2: Check the option that best describes whether the alleged conduct is ongoing.

Question 3a: Indicate whether you or your legal representative had any prior communication with the National Highway Traffic Safety Administration (“NHTSA”) concerning this matter.

Question 3b: If you answered “yes” to Question 3a, provide the name of the NHTSA staff member(s) with whom you or your counsel communicated and date of such communication.

Question 4a. Check the option that best describes whether your allegation is related to a potential safety-related defect or noncompliance with an applicable Federal Motor Vehicle Safety Standard (FMVSS).

Question 4b. If you answered “yes” to Question 4a, provide a detailed description of the allegation and a detailed description of how the allegation affects vehicle/system/component performance and/or compliance. Please include the make, model, model year, part number, component number, etc. if known.

Question 5a. Check the option that best describes whether your allegation is related to any violation or alleged violation of any notification or reporting requirement of the Safety Act?

Question 5b. If you answered “yes” to Question 5a, provide a description of the notification or reporting issue. State in detail all facts pertinent to the alleged violation.

Question 6: Describe all supporting materials in your possession and the availability and location of additional

supporting materials not in your possession. Attach additional sheets if necessary.

Section E: Additional Information

Question 1: Describe how you learned about or obtained the information that supports your allegations. In addition, if any information was obtained from a public source, identify the source with as much particularity as possible. Attach additional sheets if necessary.

Question 2. Identify with particularity any documents or information in your submission that you believe could reasonably be expected to reveal your identity, and explain the basis for your belief that your identity could be reasonably expected to be revealed if the documents or information were disclosed to a third party.

Question 3a. Check the option that best describes whether you or your legal representative have taken any other action regarding the issue or your allegations.

Question 3b. If your answer to Question 3a was “Yes,” provide details. Use additional sheets if necessary.

Question 4. Check the option that best describes whether you acquired information through a means or manner that has been determined by a United States Federal court or a State court to violate applicable Federal or State criminal law. The question also contains a statement that if the answer to this question is yes, to please contact NHTSA’s Office of the Chief Counsel before you submit this form.

Question 5. Check the option that best describes whether you acquired the original information that you are submitting to NHTSA solely through a communication that was subject to a privilege, such as the attorney-client privilege or attorney work product doctrine. The question also contains a statement that if the answer to this question is yes, to please contact NHTSA’s Office of the Chief Counsel before you submit this form.

Question 6: Provide any additional information that you think may be relevant. Attach additional sheets if necessary.

Section F: Prospective Whistleblower's Declaration

This is to be completed and signed by the person submitting the information.

Section G: Legal representative Certification

This is to be completed and signed by an legal representative for an anonymous person submitting information.

If you have an legal representative and are not submitting this form anonymously, this section does not need to be completed.

Appendix B to Part 513- FORM WB-RELEASE

UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (“NHTSA”)

OMB APPROVAL
OMB Number:
NHTSA Form 1685

FORM WB-RELEASE
WHISTLEBLOWER RELEASE FORM

See attached Notice of Whistleblower Rights and Protections, Privacy Act Statement, Submission Procedures and Completion Instructions below.

A. Information			
1. Last Name	2. First Name		3. M.I.
4. Street Address			5. Apartment/Unit #
6. City	7. State/Province	8. ZIP/Postal Code	9. Country
10. Name of the motor vehicle manufacturer, part supplier and/or dealership to which this issue relates:			

B. Release

I understand that in the course of an inquiry or analysis surrounding my allegations, it may become necessary for NHTSA to reveal information that reasonably could be expected to reveal my identity to persons or their counsel or agents at the organization or institution against whom such allegations are made or other entities.

☐

CONSENT - I have read and understand the above information and authorize NHTSA to reveal any information that could reasonably be expected to reveal my identity to persons at the organization or institution against whom my allegations are made, or their agents or counsel, to governmental entities outside the United States and to other

C. Prospective Whistleblower's Signature

Signature

Date

Please be advised that pursuant to 5 C.F.R. § 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Notice of Whistleblower Rights and Protections

This brief description will provide you with an overview of the whistleblower rights and protections.

Whistleblowers, as that term is defined in 49 U.S.C. § 30172(a)(6), have a right to keep their identity confidential in most situations. 49 U.S.C. § 30172(f). Generally speaking, any information which reasonably could be expected to reveal the identity of a whistleblower can be disclosed only under limited circumstances. One circumstance where NHTSA could reveal such information is if the whistleblower gives prior written consent. 49 U.S.C. § 30172(f)(1)(B).

The Freedom of Information Act (FOIA), 5 U.S.C. § 552, gives the public access to records of the Federal

Government. Individuals can obtain information from many categories of records of the Government--not just materials that apply to them personally. NHTSA must honor requests under the FOIA, with some exceptions. Information that could reasonably be expected to reveal the identity of a whistleblower is exempted from FOIA disclosure by statute. *See* 49 U.S.C. § 30172(f)(3); 5 U.S.C. § 552(b)(3)(B).

NHTSA may disclose information that could reasonably be expected to reveal the identity of a whistleblower if it follows the provisions of 5 U.S.C. § 552a (the Privacy Act of 1974). 49 U.S.C. § 30172(f)(1). The Privacy Act prohibits the disclosure of information from a system of records (where information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual) absent the written consent of the subject individual, unless the disclosure is pursuant to one of the twelve statutory conditions.

Furthermore, under 49 U.S.C. § 30171, employees providing certain motor vehicle safety information have protections from discrimination. Under 49 U.S.C. § 30171(a)(1), a motor vehicle manufacturer, parts supplier or dealership may not discharge an employee or otherwise discriminate against the employee because the employee provided, caused to be provided, or is about to provide (with knowledge of the employer) or cause to be provided to the employer or the Secretary of Transportation information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of the Safety Act (49 U.S.C. 30101 et. seq.).

Privacy Act Statement

The Privacy Act of 1974 requires that the National Highway Traffic Safety Administration (“NHTSA”) inform individuals of the following when asking for information. This form may be used by an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership who wishes to provide prior written consent for the Agency to disclose information which could reasonably be expected to reveal their identity. Furnishing this

form is voluntary.

Questions concerning this form may be directed to the National Highway Traffic Safety Administration, Office of the Chief Counsel by email at NHTSAWhistleblower@dot.gov, or a NHTSA attorney with whom you have previously been in contact.

OMB Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. NHTSA estimates that completing and submitting this form will take approximately 15 minutes. The OMB Control Number for this information collection is 2127-XXXX. Please send comments to the Agency regarding the accuracy of this estimate and any suggestions for reducing this burden.

The information requested on the WB-RELEASE form is voluntary. The WB-RELEASE form is for those potential whistleblowers who wish to provide prior written consent for the Agency to disclose information which could reasonably be expected to reveal the potential whistleblower's identity.

The Agency anticipates that this form will be submitted to a dedicated email address or other method specifically designated on NHTSA's website. NHTSA intends to treat the information as confidential under the provisions of 49 U.S.C. § 30172(f).

General Information and Submission Procedures

- This form should be used by persons that want to provide prior written consent to the Agency to disclose information which could reasonably be expected to reveal their identity.

- You must sign the WB-RELEASE form as the prospective whistleblower.
- You must submit your form to NHTSA in one of following ways: by emailing it to NHTSAWhistleblower@dot.gov or by any such method that the Agency may expressly designate on its website (<https://www.nhtsa.gov/laws-regulations/whistleblower-program>).

Instructions for Completing Form WB-RELEASE

Section A: Information

Questions 1-9: Please provide the following information about yourself:

- Last Name, First Name, and Middle Initial;
- Complete address, including city, state/province, zip/postal code, and country

Question 10: Please provide the name of motor vehicle manufacturer, part supplier and/or dealership to which the issue relates.

Section B: Release

Check the box before the word “**CONSENT**” to indicate your consent to allow the Agency to reveal any information that could reasonably be expected to reveal your identity to persons at the organization or institution against whom your allegations are made, or their agents or counsel, to governmental entities outside the United States and to other persons or entities that NHTSA determines should have access to this information to assist in NHTSA’s analysis, inquiry or investigation.

This section also informs you that you are not required to consent to this release and that you do so voluntarily.

Section C: Prospective Whistleblower’s Signature

This section must be signed and dated by the prospective whistleblower.

Appendix C to Part 513- Form WB-AWARD

UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (“NHTSA”)

OMB APPROVAL

OMB Number:

NHTSA Form 1686

FORM WB-AWARD

WHISTLEBLOWER AWARD APPLICATION

See attached Privacy Act Statement, Submission Procedures and Completion Instructions below.

A. CLAIMANT’S INFORMATION (REQUIRED FOR ALL SUBMISSIONS)			
1. Last Name	2. First Name	3. M.I.	
4. Street Address		5. Apartment/Unit #	
6. City	7. State/Province	8. ZIP/Postal Code	9. Country
10. Telephone	11. Alt. Phone	12. Email Address	13. Preferred Method of Communication
B. LEGAL REPRESENTATIVE INFORMATION (If Applicable – See Instructions)			
1. Legal Representative’s Name			
2. Firm Name			
3. Street Address			
4. City	5. State/Province	6. ZIP/Postal Code	7. Country

8. Telephone	9. Email Address
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Please be advised that pursuant to 5 C.F.R. § 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

C. ELIGIBILITY REQUIREMENTS AND OTHER INFORMATION

1. Did you acquire the original information that you submitted to NHTSA solely through a communication that was subject to the attorney-client privilege or attorney work product doctrine?

2. Did you acquire the original information that you submitted to NHTSA by a means or manner that was determined by a United States Federal court or State court to violate applicable Federal or State criminal law?

3. Are you currently a subject or target of a criminal investigation, or have you been convicted of a criminal violation, in connection with the allegations or conduct that you submitted to the NHTSA?

4. Indicate whether any of the factors in 49 CFR 513.7 apply, which could make you ineligible for an award.

☐ Yes ☐ No

5. If you answered “Yes” to any of Questions above, provide details. Use additional sheets, if necessary.

D. ISSUE DETAILS

1. How did you submit original information to NHTSA

☐ By email to NHTSAWhistleblower@dot.gov

☐ Other:

2. Date that you submitted the information:

3. Name of motor vehicle manufacturer, part supplier and/or dealership to which this issue relates

E. NOTICE OF COVERED ACTION AND RELATED ACTION

1. Date of relevant Notice of Covered Action

2. Notice Number

3. Case Name

4. Case Number

5. Date of relevant Notice of Covered Action for any related action

6. Notice Number of Related Action

7. Case Name of Related Action

8. Case Number of Related Action

F. AWARD JUSTIFICATION

Explain the basis for your belief that you should receive an award in connection with your submission of information to NHTSA. Specifically address how you believe you voluntarily provided NHTSA with original information that led to the successful resolution of a covered action. Provide any information that you think may be relevant in light of the criteria for determining the amount of an award set forth in 49 U.S.C. § 30172 and 49 C.F.R. Part 513. Use additional sheets, if necessary.

G. CLAIMANT'S DECLARATION

I declare under penalty of perjury under the laws of the United States that the information contained herein is true and correct to the best of my knowledge, information and belief. I fully understand that I may be subject to prosecution and ineligible for a whistleblower award if, in my submission of information or other interactions with the National Highway Traffic Safety Administration, or my dealings with another authority in connection with a related action, I knowingly and

Print Name

Signature

Date

Please be advised that pursuant to 5 C.F.R. § 1320.5(b)(2)(i), you are not required to respond to this collection of information unless it displays a currently valid OMB control number.

Privacy Act Statement

The Privacy Act of 1974 requires that the National Highway Traffic Safety Administration (“NHTSA”) inform individuals of the following when asking for information. This form may be used by an employee or contractor of a motor vehicle manufacturer, part supplier, or dealership, or a legal representative acting on such person’s behalf, who wishes to apply for a whistleblower award for providing original information that led to the successful resolution of a covered action. The information provided will allow the Agency to evaluate the claim and elicit information relevant to whistleblower eligibility requirements. Furnishing the information is voluntary but a decision not to do so will result in you not being eligible for award consideration.

Questions concerning this form may be directed to the National Highway Traffic Safety Administration, Office of the Chief Counsel by email to NHTSAWhistleblower@dot.gov or the NHTSA attorney with whom you have previously been in contact.

OMB Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. NHTSA estimates that completing and submitting this form will take approximately 10 hours. The OMB Control Number for this information collection is 2127-XXXX. Please send comments to the Agency regarding the accuracy of this estimate and any suggestions for reducing this burden.

The information requested on the WB-AWARD form is voluntary. However, under § 513.9(b), a WB-AWARD form must be submitted by the claimant in order for the claimant to be eligible for a whistleblower award.

The Agency anticipates that this form will be submitted to a dedicated email address or other method specifically designated on NHTSA’s website. NHTSA intends to treat the information

as confidential under the provisions of 49 U.S.C. § 30172(f).

General Information

- This form should be used by persons making a claim for a whistleblower award in connection with information provided to NHTSA. In order to be eligible for an award, you must meet all the requirements set forth in 49 U.S.C. § 30172 and the rules thereunder, as contained in 49 CFR Part 513.
- You must sign the WB-AWARD form as the claimant. If you provided your information to NHTSA anonymously, you must now disclose your identity on this form and your identity must be verified in a form and a manner that is acceptable to the Agency prior to the payment of any award.
- Your WB-AWARD form, and any attachments thereto, must be received by NHTSA within ninety (90) days of the date the Notice of Covered Action to which the claim relates.
- You must submit your form to NHTSA in one of following two ways: emailing it to NHTSAWhistleblower@dot.gov or by any such method that the Agency may expressly designate on its website (<https://www.nhtsa.gov/laws-regulations/whistleblower-program>).

Instructions for Completing Form WB-AWARD

Section A: Claimant's Information

Questions 1-13: Please provide the following information about yourself:

- Last Name, First Name, and Middle Initial;
- Your complete Address, including city, state/province, zip/postal code, and country;
- Your telephone number, and if available, an alternate number where you can be reached;
- Your email address (to facilitate communications, we strongly encourage you to provide your email address); and

- Your preferred method of communication.

Section B: Legal representative Information. Complete this section only if you are represented by a legal representative in this matter. If you are not represented by a legal representative in this matter, leave this Section blank.

Questions 1-9: Provide the following information about the legal representative representing you in this matter:

- Your legal representative's name;
- The firm name;
- Your legal representative's complete address, including city, state, and zip code;
- Your legal representative's telephone number; and
- Your legal representative's email address.

Section C: Eligibility Requirements and Other Information

Question 1: Indicate whether you acquired the original information that you submitted to NHTSA solely through a communication that was subject to the attorney-client privilege or attorney work product doctrine.

Question 2: Indicate whether you acquired the original information that you submitted to NHTSA by a means or manner that was determined by a United States Federal court or State court to violate applicable Federal or State criminal law.

Question 3: Indicate whether you are currently a subject or target of a criminal investigation or whether you have been convicted of a criminal violation in connection with the allegations or conduct that you submitted to NHTSA.

Question 4: Indicate whether any of the factors in 49 CFR 513.7 apply, which could make you ineligible for an award.

Question 5: If you answered "yes" to Questions 1, 2, 3, or 4 above, provide details. Use additional sheets if necessary.

Section D: Whistleblower Information Details

Questions 1-3: Provide the following information about the whistleblower information that you submitted to NHTSA:

- Select the method by which you submitted original information to NHTSA. If you selected “Other” describe how you submitted the information;
- Provide the date that you submitted the original information to NHTSA;
- Provide the name of the motor vehicle manufacturer, part supplier, and/or dealership to which the issue relates.

Section E: Notice of Covered Action

The process for making a claim for a whistleblower award begins with the publication of a “Notice of Covered Action” on NHTSA’s website. This notice is published whenever a judicial or administrative action brought under 49 U.S.C. Chapter 301 by NHTSA, the U.S. Department of Transportation or the U.S. Department of Justice results in collected monetary sanctions exceeding \$1,000,000.

A Notice of Covered Action is published on NHTSA’s website subsequent to the entry of a final judgment, order or agreement that by itself, or collectively with other judgments, orders or agreements previously entered in the action, results in collected monetary sanctions exceeding the \$1,000,000 threshold.

Question 1: Provide the date of the Notice of Covered action to which this claim relates.

Question 2: Provide the notice number of the Notice of Covered Action.

Question 3: Provide the case name referenced in the Notice of Covered Action.

Question 4: Provide the case number referenced in the Notice of Covered Action.

Question 5: Provide the date of the relevant Notice of Covered Action for any related action

Question 6: Provide the notice number of the related action

Question 7: Provide the case name of the related action

Question 8: Provide the case number of the related action

Section F: Award Justification

Use this section to explain the basis for your belief that you should be granted an award in connection with your submission of information to NHTSA. Specifically address how you believe you voluntarily provided NHTSA with original information that led to the successful resolution of a covered action. Provide any information that you think may be relevant in light of the criteria for determining the amount of an award set forth in 49 U.S.C. § 30172 and 49 C.F.R. Part 513.

49 U.S.C. § 30172(c) provides that in determining an award made under 49 U.S.C. § 30172(b), the Secretary shall take into consideration: (i) if appropriate, whether a whistleblower reported or attempted to report the information internally to an applicable motor vehicle manufacturer, part supplier, or dealership; (ii) the significance of the original information provided by the whistleblower to the successful resolution of the covered action; (iii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in the covered action; and (iv) such additional factors as the Secretary considers relevant.

Section G: Claimant's Declaration

This section must be completed and signed by claimant.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95.

Ann Carlson,

Chief Counsel.

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